(16,719.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 506.

THE ANGLO-CALIFORNIAN BANK, LIMITED, APPELLANT,

vs.

THE SECRETARY OF THE TREASURY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

INDEX.

a In the United States Circuit Court of Appeals for the Ninth Circuit.

THE ANGLO-CALIFORNIAN BANK, LIMITED, Appellant,
vs.
THE SECRETARY OF THE TREASURY, Petitioner, etc., Appellee. } No. 273.

In the matter of the petition of the Secretary of the Treasury for review of a decision of the board of United States general appraisers relative to certain twenty steel rails.

Transcript on Appeal.

From the circuit court of the United States for the northern district of California.

1 THE UNITED STATES OF AMERICA:

In the Circuit Court of the United States, Ninth Circuit in and for the Northern District of California.

Petition.

The petition and application of the Secretary of the Treasury for a review, under an act of Congress approved June 10, 1890, entitled "An act to simplify the laws in relation to the collection of revenues," of the questions of law and fact involved in a decision of the board of general appraisers on duty at the port of New York, State of New York, in the matter of the classification of certain (T) steel rails, merchandise imported by the Bank of California of San Francisco, California, into the port of said San Francisco, the subsequent liquidation of duties whereon was protested by the Anglo-Californian Bank, Limited, at the same place.

To the honorable the circuit court of the United States, ninth circuit in and for the northern district of California:

The petition and application of the Secretary of the Treasury respectfully shows—

That your petitioner is and at the several times hereinafter mentioned was the Secretary of the Treasury of the United States.

That the Bank of California and the Anglo-Californian Bank, Limited, hereinafter mentioned, at the several times hereinafter referred to, were and are corporations duly organized and existing, the former under and by virtue of the laws of said State of California, the latter under and by virtue of the laws of the Kingdom of Great Britain and Ireland, both engaged in the business of banking, in the city and county of San Francisco in said State, and elsewhere, which included, among other things, the importation of foreign merchandise heretofore and hereinafter mentioned into said port.

2

That on or about the second day of March, 1887, the said Bank of California imported into the United States, to wit, at the said port of San Francisco, California, from a foreign port or place, to wit, from Barrow, in the Kingdom of Great Britain and Ireland, certain merchandise invoiced as flange (T) steel rails, by the steamship or vessel known as the "Troop," which said merchandise purports to be more fully described in and by the warehouse entry thereafter made thereof at the custom-house at the said port of San Francisco, California, and numbered 1031 (the said merchandise being more fully described as the merchandise subject to entry number 1031 and protest number 3876 of the official serial numbers of said custom house, and subject to decision number — of the official serial numbers of the board of United States general appraisers on duty at New York, State of New York, and being further described and identified as flange steel rails, upon the custom-house record invoice number 2733, series of 1888, relating to said merchandise), and which said merchandise included the said rails heretofore described, and the subject of the protest heretofore and hereinafter mentioned; and such merchandise remained in general order un-
3 claimed until the 27th day of February, 1888, when warehouse entry thereof was made and bond given by the said Bank of California as such importer and consignee; and thereupon such proceedings were had that said warehouse entry was duly liquidated March 30, 1888, by the collector of said port, under the act of March 3rd, 1883, in full force and effect at said time at $17.00 per ton, and said merchandise placed in bonded warehouse; and at the expiration of one year from the date of said original importation, the said merchandise not having been removed from said warehouse, the additional duty of 10 per cent. prescribed by section 2970, U. S. R. S., also in full force and effect at said time, was charged upon the bond against said merchandise.

That thereafter and at the expiration of three years of said bonded period, said merchandise not having been removed from said warehouse, your petitioner, upon application of the Oregon Pacific Railroad Company, a corporation, for whose account said merchandise was imported, authorized a postponement of the sale of said merchandise abandoned to the United States under the provisions of section 2971, U. S. R. S., for three months, and further and similar postponements were thereafter authorized by your petitioner, the Bank of California uniting in the application of said Oregon Pacific Railroad Company therefor.

That thereafter, and during the time embraced in such postponements of sale, and on the 15th day of March, 1895, withdrawal entry for consumption of said twenty steel rails, which are part of the merchandise hereinbefore mentioned, and are the subject
4 of said protest, weighing about five tons, was made by said Anglo-Californian Bank, Limited, upon the authority of the said Bank of California, importer and consignee as aforesaid, and duty thereon was liquidated and assessed by the said collector of the said port of San Francisco, at the said sum of $17.00 per ton, and 10 per cent. additional under the said act of March 3rd, 1883,

and said section 2970, U. S. R. S., which said sum amounting to the sum of $92.20 was liquidated, ascertained, levied and collected by said collector, and the full amount thereof, together with all charges ascertained to be due upon said merchandise, was paid by said Anglo-Californian Bank, Limited, to said collector on said 15th day of March, 1895.

That within ten days after such liquidation, ascertainment, assessment and payment of said duties, to wit: on the 18th day of March, 1895, the said Anglo-Californian Bank, Limited, being dissatisfied with said exaction, ascertainment and liquidation, and the decision of your petitioner and the said collector in the premises, gave notice to the said collector in writing of such dissatisfaction, which written notice distinctly and specifically set forth the reasons for the objections of said Anglo-Californian Bank, Limited, thereto, as follows:

That the said twenty steel rails having been continued in bonded warehouse, under terms of original warehouse bond with the sanction of the petitioner, all charges, including storage, having been paid thereon, no legal abandonment to the United States has occurred; that they are consequently entitled to be withdrawn
5 from consumption, subject only to the duty prescribed in Schedule C, paragraph 117, act of August 28, 1894, *i. e.*, seven-twentieths of one cent per pound. That section 50, of act of October 1, 1890, was applicable to said rails and made inoperative thereon, paragraph 147 of said act of March 3, 1883, and subjected said rails, if withdrawn after October 6, 1890, and before August 28, 1894, to rate in duty named in paragraph 141 of said act of October 1, 1890, and that the enacting clause of said act of August 28, 1894, was intended as a substitute for section 50 of the said act of October 1, 1890; and further that section 29 of the act of June 10, 1890, and section 50 of the said act of October 1, 1890, repealed section 2970 U. S., R. S., and that the duties on said twenty steel rails shall be assessed at the rate of seven-twentieths of a cent per pound, under said paragraph 117, Schedule C, act of August 28, 1894.

That thereafter and in due and proper time, said collector transmitted all the papers and exhibits on which said entry was made, or connected therewith to the board of the United States general appraisers, then on duty at the said port of New York; and thereafter and on the 19th day of April, 1895, said board, to wit: Wilber F. Lunt, J. B. Wilkinson Jr. and Thad. S. Sharretts, made and rendered their decision in said matter in favor of and sustaining said protest and against the said liquidation, ascertainment and decision made and rendered and duty levied and exacted as aforesaid by said collector.

And your petitioner avers that, as Secretary of the Treasury as aforesaid, he is dissatisfied with the decision of said board of
6 general appraisers as to the construction of the law respecting the act of Congress under which, and the amount of duties to which said steel rails are subject upon their withdrawal entry as aforesaid.

Wherefore, your petitioner as such Secretary of the Treasury, now

applies to this honorable court for a review of the questions of law and fact involved in said decision of said board of general appraisers.

And in respect to said withdrawal entry and payment, your petitioner specifies as the reasons for his objections thereto, that the said board of general appraisers erred in finding as a conclusion of law, holding and deciding that the said rails were not dutiable, upon their withdrawal from bond at the time aforesaid, under the said act of March 3, 1883, and said section 2970, U. S. R. S., but in finding as a conclusion of law, holding and deciding that the said rails were so dutiable under the said act of August 1, 1894, and in finding, holding and deciding that the amount of such duties was properly seven-twentieths of a cent per pound of such rails, and in not finding, holding and deciding that said rails upon their withdrawal were subject to a duty of $17.00 per ton, amounting, with the ten per cent. hereinbefore referred to, to the sum of $92.20.

And your petitioner further prays this honorable court for an order that the said board of general appraisers *to* return to this court the record and evidence taken by them, together with a certified statement of the facts involved in said case, and their decision thereon; and that upon said record and evidence, and such
7 further evidence, if any, as may be taken herein, the court proceed to hear and determine the questions of law and of fact involved in said decision, respecting the liquidation and ascertainment of the rate of duty chargeable upon said merchandise upon its withdrawal from bond as aforesaid, and that upon said determination, said decision of said board of general appraisers be reversed and set aside, and that it be adjudged that the duties on said twenty steel rails, upon their withdrawal from bond as aforesaid, were properly liquidated and assessed at the sum of $17.00 per ton, under said act of March 3, 1883, and ten per cent. additional thereof, under said section 2970, U. S. R. S., 17 May, 1895.

THE SECRETARY OF THE TREASURY,
By H. S. FOOTE,
United States Attorney and Attorney for Petitioner.

SAMUEL KNIGHT,
Ass't U. S. Att'y, of Counsel.

(Endorsed:) Filed May 17, 1895. W. J. Costigan, clerk, by W. B. Beaizley, deputy clerk.

8 THE UNITED STATES OF AMERICA:

In the Circuit Court of the United States in and for the Northern District of California, Ninth Circuit.

In the matter of the petition of the Secretary of the Treasury of the United States for review of decision of U. S. general appraisers relative to certain 20 steel rails, merchandise imported into the port of San Francisco, California, by the Bank of California, the subsequent liquidation of duties whereon was protested by the Anglo-Californian Bank, Limited.

Order of Court for Return of Record, etc.

Whereas, the Secretary of the Treasury of the United States, has applied to this court to review the questions of law and fact involved in the decision of the U. S. general appraisers on duty at the port of New York, State of New York, made and rendered by said U. S. general appraisers, on the 19th day of April A. D. 1895, liquidating and assessing the sum of seven-twentieths of a cent per pound on said merchandise, upon the withdrawal thereof from bond, which said merchandise was imported into the United States at the port of San Francisco, California, and entered at the custom-house at San Francisco, California, (the said merchandise being more fully described as being the merchandise subjected to entry number 1031 and protest number 3876 of the official serial numbers of said custom-house, and also subject to said decision number — of the official serial numbers of the U. S. general appraisers, to which
9 said numbers, reference is here made, and being further identified as flange steel rails, upon the custom-house record invoice relating to said merchandise.)

And, whereas, the said Secretary of the Treasury of the United States, has duly filed his application and petition for a review of said decision, and praying among other things, that the said U. S. general appraisers be ordered to return to this court the records and evidence taken by them in said cases, together with a certified statement of the facts involved in the case, and their decision thereon.

Now, therefore, in consideration of the premises it is hereby ordered, that the three U. S. general appraisers on duty at the port of New York, State of New York, do, with all convenient speed, return to this court the record of said matter and the evidence taken by them therein, together with a certified statement of the facts involved in the case, and their decision thereon.

And it is further ordered that this order be entered upon the minutes of this court and served upon each member of the said board of three general appraisers, by delivering to each of them a certified copy thereof.

JOSEPH McKENNA, *Judge.*

(Endorsed:) Filed and entered May 17, 1895. W. J. Costigan, clerk, by W. B. Beaizley, deputy clerk.

Clerk's Certificate.

I, W. J. Costigan, clerk of the circuit court of the United
10 States of America, of the ninth judicial circuit, in and for the northern district of California, do hereby certify the foregoing to be a full, true and correct copy of an original order made, filed and entered on the 17th day of May, A. D. 1895, as the same appears of record in said court in the above-entitled matter.

Attest, my hand and the seal of said circuit court, this 24th day of May, A. D. 1895.

[SEAL.] W. J. COSTIGAN, *Clerk.*

Proof of Service on Appraisers.

I do hereby certify, that in obedience to an order of this court, dated the 24th of May, 1895, on the 11th day of June, 1895, at the city of New York, in my district, I personally served the within order upon the within-named board of three general appraisers, by exhibiting to Wilbur F. Lunt, Joseph B. Wilkinson and Thaddeus S. Sharretts, members of said board, the within original, and at the same time delivering to and leaving with each of them a copy thereof.

JOHN H. McCARTY,
U. S. Marshal, S. D. N. Y.

J. G. McC., New York, June 18, 1895.

(Endorsed:) Filed June 24th, 1895. W. J. Costigan, clerk.

11 In the Circuit Court of the United States for the Northern District of California.

A. W. C. J. P. Lake (Seal), chief clerk board U. S. general appraisers.

In the matter of the application of the Anglo-Californian bank for a review of the decision of the board of general appraisers as to the rate, etc., of duty of certain steel rails imported by said bank on the British ship "Troop" March 2, 1887. Suit No. 1285.

Return of the board of United States general appraisers to the order of Hon. Joseph McKenna, circuit judge, dated New York, June 13, 1895.

Return of Board of U. S. General Appraisers.

The board of United States general appraisers, sitting at New York, in response to the order of the court in the above matter, make the following return of the record and evidence taken in the above matter, and of the facts therein, as ascertained by them.

They state that a letter, hereto annexed marked Exhibit "A" was received from the collector of customs at San Francisco, submitting, under the provisions of section 14 of the act of June 10, 1890, the

protest, hereto annexed, marked Exhibit "B," described as follows:

Colls. No.	Board No.	Protestant.	Vessel.	Date of entry.
3876	26439 B.	Anglo-Californian Bank, Ltd.	Troop.	March 2, 1887.

That accompanying said letter was a letter from the naval officer of San Francisco, which is hereto attached marked Exhibit "C."

12 That also accompanying said letter from the collector of customs at San Francisco were two communications from the acting Secretary of the Treasury containing instructions as to the withdrawal of said merchandise from bonded warehouse, which are hereto attached marked Exhibits "D" and "E."

A letter was received by the board from the acting Secretary of the Treasury transmitting an agreed statement of facts relating to the importation in question signed by the parties in interest, and accepted by the board as correct. Said letter and inclosure are hereto annexed marked Exhibits "F" and "G."

Two affidavits by P. W. Bellingall and George H. Probasco were submitted and considered by the board. They are returned herewith as Exhibits "H" and "J."

That on the 19th of April, 1895, the board rendered their decision herein, a copy of which, known as G. A. 3054, is returned herewith marked Exhibit "K."

EXHIBIT "A."

OFFICE OF THE COLLECTOR OF CUSTOMS,
E. J. B. PORT OF SAN FRANCISCO, *March* 19, 1895.

Board of general appraisers, New York city, N. Y.

GENTLEMEN: Referring the board to the enclosed copy of department telegram of March 15th, 1895, I enclose herewith protest of the Anglo-Californian bank, the duly authorized agent of the Bank of California, against the action of this office in exacting duty at

13 the rate of $17.00 per ton under par. 147 act of March, 1883, and the additional duty of 10 per cent. prescribed by section 2970, Revised Statutes, on the withdrawal for consumption of 20 steel rails from warehouse bond No. 1031, imported by the Bank of California per British ship "Troop," March 2nd, 1887.

The action of this office was in accordance with department letter of October 21st, 1890. Copy enclosed.

The board will observe that the contention of the protestors is that the rails are entitled to be withdrawn at the rates prescribed by the act of August 28th, 1894. Section 14, act June 10th, 1894, has been complied with.

Respectfully, JOHN H. WISE, *Collector.*

(Endorsed:) 26439 B. Custom-house collector's office, San Francisco, Cal., Mar. 19, 1895, John H. Wise, collector. Subject: Protest of the Anglo-Cal. bank. Steel rails. Enclosures 3 M. Received by board of U. S. general appraisers. Mar. 25, 1895.

EXHIBIT "B."

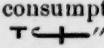
Protest of Anglo-Californian Bank, Limited.

SAN FRANCISCO, *March* 16, 1895.

To the collector of customs, district and port of San Francisco.

SIR: We hereby protest against the liquidation of our withdrawal entry and the assessment and payment of duties as exacted by you, at the rate of $17.00 per ton, under par. 147 of the act of Mar. 3, 1883, with 10 per cent. additional duty under section 2970
14 Revised Statutes, on a withdrawal entry for consumption of twenty steel rails from warehouse bond No. 1031.

Said 20 steel rails (which were imported Mar. 2, 1887, by the Bank of California in the Br. Sh. "Troop" from Barrow, and entered for warehouse, and are more fully described in bonded entry No. 1031 (invoice No. 2733) were withdrawn from U. S. bonded warehouse by protestants from bond 1031, on a proper withdrawal entry for consumption at port of original importation, which duly passed through the various departments of the collector's office and the naval office in the regular manner prescribed for withdrawal of all merchandise from warehouse for consumption. Duties on these 20



steel rails amount to $92.20 (being 4-18-2-13 at $17.00 per ton—$83.82 and 10 per cent. $8.38) were duly paid March 16, 1895. Although the three years expired March 2, 1890, since that time withdrawals against this bond (1031) have been permitted by the Treasury Department, and now show upon the records of the custom-house, duty paid as *bona fide* withdrawals for consumption, as follows: (26439 B)

Oct.	9, 1891	812	steel rails.
Mar.	31, 1892	625	" "
Apr.	14, 1892	1,217	" "
Aug.	6, 1892	122	" "
Sept.	26, 1892	1,623	" "
Mar.	7, 1893	406	" "
Mar.	13, 1894	70	" "
Mar.	24, 1894	1,116	" "

15 Inasmuch as these rails have been continued in warehouse under the terms of the original warehouse bond, with the sanction of the Hon. Secretary of the Treasury, all charges including storage, having been and still being paid by protest, it is claimed that no legal abandonment to the United States has occurred; that they are consequently entitled to be withdrawn for consumption, and are therefore subject to no other rate of duty than is provided for in Schedule C, paragraph 117, act of Aug. 28, 1894, the only existing legislation for the collection of duties on steel rails or railway bars, *i. e.*, seven-twentieths of one cent per pound.

It is claimed that the language of sec. 50, of the act of Oct. 1, 1890, applicable to merchandise in warehouse on Oct. 6, 1890, for which no permit of delivery to the importer or his agent had been issued, made the rate of duty ($17.00 per ton) provided for in par. 147 of act of March 3, 1883, inoperative, and subjected the rails withdrawn after Oct. 6, 1890, and up to Aug. 28, 1894, to the rate of duty in par. 141 of the act of Oct. 1, 1890, and that the enacting clause of the act of Aug. 28, 1894, in which appear the words, "or withdrawn for consumption," was intended as a substitute for section 50 of the act of Oct. 1, 1890.

It is also claimed that section 29, of the act of June 10, 1890, and section 50, of act of Oct., 1890, repealed sec. 2970, Revised Statutes (see S. S. 15517 G. A. 2827, dated Nov. 24, 1894). We therefore claim that duties should be assessed on these steel rails or railway
16 bars at the rate of seven-twentieths of one cent per pound only, under par. 117, Schedule C of the act of Aug. 28, 1894, and we pay the amount exacted solely to obtain possession of the rails, and claim the withdrawal entry should be readjusted, and the amount overcharged refunded to us.

Yours respectfully,

THE ANGLO-CALIFORNIAN BANK, LD.,
By IN. STEINHART, *Its Attorney-in-fact.*

(Endorsed:) 3876. Inv. No. 2733. Bond No. 1031. Protest. San Francisco, M'ch 16, 1895. Anglo-Californian Bank, Ltd., against liquidation of withdrawal entry, assessment and exaction of $17.00 per ton and 10 per cent. additional duty on certain steel rails withdrawn from warehouse and duties paid M'ch 16, 1895. Imported in the Br. Sh. "Troop" from Barrow, arrived M'ch 2, 1887. Received Mar. 18, 1895. Adjuster's office, custom-house, S. F., Cal. W. P. W. Bellingall, custom-house broker; office, 508 Battery street, S. F. 26439 B.

EXHIBIT "C."

Letter of Naval Officer to Collector.

OFFICE OF THE NAVAL OFFICER OF CUSTOMS,
PORT OF SAN FRANCISCO, *March 19th*, 1895.

Hon. John H. Wise, collector of the port.

SIR: The protest of the Anglo-Californian bank, in the case of steel rails covered by dep't letter of Oct. 21st, 1890, and dep't telegram of March 15th, 1895, is overruled. The case should go
17 to the G. A. for ascertainment of facts upon which the dep't may finally decide it.

Respectfully,

JOHN P. IRISH,
Naval Officer.

(Endorsed:) San Francisco, Cal., naval office, March 19, 1895, John P. Irish, naval officer. Subject: Protest of Anglo-Californian bank. Invoice No. 2733. W. H. bond, 1031. Steel rails. No. of inclosures, 3. 26439 B.

EXHIBIT "D."

Letter of Assistant Secretary of Treasury to Collector.

Copy.

TREASURY DEPARTMENT,
4244—F. OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *Oct.* 21, 1890.

Collector of customs, San Francisco, Cal.

SIR: The department is in receipt of your letter of the 11th instant, in which, referring to its telegram to you of the 9th instant, in relation to certain steel rails now in bonded warehouse which have been withheld from sale from time to time at the request of the Oregon Pacific Railroad Company; you state that you understand that said company intends to withdraw the rails and pay the duty thereon in a short time, and you request instructions as to whether the rails will be subject to duty at the rates prescribed by the acts of March 3, 1883, or at the rate prescribed by the act of October 1, 1890.

18 Upon examination of the records of the department it appears that on March 6th, last, Mr. T. E. Hogg, president of said company, made application for permission to withdraw and pay duty on the rails in question from time to time as required for use in the construction of the road before the time of the next regular sale, July,.1890; that the period of three years, from date of importation which they were allowed by law to remain in bonded warehouse expired on March 1, 1890; that this application was granted by telegram to you under date of March 7th, last, and that the time within which such withdrawals might be made was extended for the period of three months by letter addressed to you on June 30th last, and for a further period of six months by a telegram addressed to you on the 9th instant.

In reply I have to state that as the duties regular and additional had legally accrued on said rails before the passage of the act of October 1st, 1890, and the rails remained in bond merely by sufferance and not legally, they do not come within the perview of section 50, of the act of October 1st, 1890, and are not entitled to withdrawal at the reduced rate prescribed by said act.

You are therefore instructed to allow their withdrawal only on payment of the duties regular and additional which had accrued in March last.

Respectfully yours,
(Signed) O. L. SPAULDING,
Assistant Secretary.

No. enclosures, —. 26439 B.

19 *Telegram from Secretary of Treasury to Collector.*

Copy.

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *March* 15, 1895.

Collector of customs, San Francisco, Cal.:

Bank of California or properly authorized representatives may, on application, make entry for one lot of not less than five tons steel rails, paying duty under act of eighty-three. In case of such entry, remainder of rails may be withheld from sale. Collect.

——— ———,
Acting Secretary.

Official business, commercial rates. Collect.

EXHIBIT "E."

Letter of Secretary of Treasury to Collector.

4244 F. TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *March* 15, 1895.

Collector of customs, San Francisco, Cal.

SIR: The department has had under deliberate consideration an application from the parties in interest for permission to withdraw from your custody, on payment of duty and charges, under the act of August 28, 1894, the steel rails which were imported in 1887, by the Bank of California for the Oregon Pacific Railway Company. The applicants set forth the facts in the history of this case, showing that the rails were duly entered on arrival, and were
20 placed in bonded warehouse where they have continued to remain until now, with the consent of this department, which was given in compliance with the urgent petitions of the importers. The question has been somewhat complicated by the fact that partial deliveries have been made from time to time, and that duties have been exacted under the tariff of 1890, in direct violation of department's instructions to the collector, under date of October 4, 1890.

The department's decision in the question at issue, necessarily involves principles which reach far beyond the special case which forms the subject of this communication. It establishes the statutes of all merchandise which has been suffered to remain in bond beyond the legal period of three years from the date of importation.

A reference to the decisions of the department for a long series of years shows that it has uniformly held that the duties found due on the warehouse bond at the date of its expiration became a debt col-

lectable from the proceeds of a sale of the goods or from the sureties on the bond, and that subsequent changes of tariff can neither increase nor decrease the amount of such debt.

The department finds no reason at this time for departing from the ruling above cited, and you are accordingly instructed that the amount of duty to be collected on the goods in question is the amount which was found to be due on final liquidation, and at the date of the expiration of the bond; that is to say, the duty assessed under the act of March 3, 1883.

21 Appreciating the conditions which affect this case, the department is not disposed to inflict unnecessary hardship upon the importers by a summary closure of the matter, and you are therefore authorized to permit the importers if they shall so elect to pay the duties upon and to have delivery of a small portion, say not less than four tons of the above steel rails. It may be that duties will be so paid under protest in order that the exaction of duty may be reviewed by the board of general appraisers. Should this prove to be the case, you are further authorized to delay the sale of the remaining property until a decision has been reached.

Respectfully yours,

(Signed) C. S. HAMLIN,
Acting Secretary.

EXHIBIT "F."

Letter of Secretary of Treasurer to Board.

4244—F. TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
WASHINGTON, D. C., *April* 9, 1895.

To the president of the general board of appraisers, 125 Bleecker street, New York, N. Y.

SIR: Enclosed herewith please find statement of facts agreed upon between this department and the attorney of the Bank of California, San Francisco, relative to certain importations of steel rails, and to the withdrawal of the same from bonded warehouse.

22 It is understood that J. F. Evans, Esq., the attorney of the bank, will call at your office and sign the statement, which has already been signed by the Secretary of the Treasury. This paper is to be considered an exhibit in the case of the protest which was the subject of a recent review by your board.

Respectfully yours, C. S. HAMLIN,
Acting Secretary.

(One enclosure.) J. A. W. I. M. C.

(Endorsed:) 30048 T, 26439 B. President board U. S. general appraisers. C. S. Hamlin, act'g Sec't'y. Washington, D. C., April 9, '95. Encl. statement of facts for signature of attorney for protestants, etc. Received by board of U. S. general appraisers. April 11, 1895.

EXHIBIT "G."

4244—F.

Statement of Facts in the Case of Steel Rails Imported at San Francisco and Suffered to Remain in Bond Beyond Three Years.

For the purpose of convenient reference and to avoid the necessity of introducing confirmatory testimony before the board of United States general appraisers in the matter of the classification of certain steel rails imported by the Bank of California at the port of San Francisco, California, the following statement is accepted and agreed upon as containing the material facts concerning the importation of and the circumstances affecting the merchandise in question.

The records of the custom-house show that about 5,678
23 tons of steel rails were imported at San Francisco by five different vessels at various dates, as follows:

Per "Troop," March 2, 1887	2,249	tons
" "Yeoman," April 19, 1887	250	"
" "Iron Duke," May 10, 1887	2,051	"
" "Helenslea," May 12, 1887	600	"
" "Garfield," June 24, 1887	528	"
Total	5,678	"

That the merchandise remained in general order, unclaimed, until February 27, 1888, when a warehouse entry for each of these importations was made and bonds given by the Bank of California, as the importer and consignee, the duties secured by said bonds aggregating about $96,557.73; that the bonds so given are numbered 1031, 1033, 1034, 1035 and 1036, of the custom-house series; that the warehouse entries were liquidated under the act of March 3, 1883, at $17 per ton, and at the expiration of one year from date of importation, the additional duty of 10 per cent. prescribed by section 2970, R. S., was charged upon the bonds against the merchandise, amounting to the sum of $9,655.77.

It further appears that four withdrawals were made between September 21, 1888, and December 6, 1889, at the rates thus charged, and the duties paid thereon amounting to $29,192.20; that when the bonded period of three years was about to expire the Oregon Pacific Railroad Company, upon whose account the merchandise had been imported, represented to the Treasury Department
24 that serious casualties had occurred to its road by storms and floods, and consequent embarrassment of its affairs and requested a postponement of the sale required under section 2971, R. S., whereupon, the Secretary authorized the withdrawal of the merchandise from sale for a period of three months, and it appears that this was done without notice to, or the consent of the principal or sureties on the warehousing bonds; that at the expiration of the

three months, a further postponement of six months was authorized by the Secretary; that similar postponements have been renewed for periods of six months up to the present date, the Bank of California uniting in two instances in the application for delay: the renewal authorized September 16, 1893, having been on condition that sureties shall consent; that by department's letter and telegram to the collector of customs at San Francisco, dated March 15, 1895, the sale of the merchandise was further postponed pending the decision of the board of general appraisers upon a protest of the importers against the payment of duties at the rate prescribed by the act of 1883, which were exacted upon a withdrawal entry made by authority of the department on that date (copy of letter attached).

That under date of June 30, 1890, the department had authorized the collector at San Francisco to permit withdrawals for consumption of steel rails, from time to time, in such quantities as might be desired (copy attached); that on the 21st of October, 1890, in reply to an inquiry from the collector at San Francisco, the department held that withdrawals might be made by the importers, but
25 that the duties, regular and additional prescribed by the act of 1883, had legally accrued on said merchandise on the expiration of the three years prescribed by section 2971, R. S., before the tariff act of 1890 went into effect, and consequently the importers were not entitled to withdrawals at the reduced rates prescribed by the said act.

It further appears that notwithstanding these instructions, twelve withdrawals covering about 3,306 tons were made and duties paid thereon and accepted by the collector at the rate of $13.44 per ton, the rate prescribed by the act of 1890, and the additional duty of 10 per cent. prescribed by section 2970, R. S.

It further appears that about 2,372 tons of steel rails yet remain in bonded warehouse, which have been continuously in the custody of the Government since the date of original importation at the risk and expense of the owners, and that all the charges, including storage, have been paid by the owners up to the present date.

Upon the above state of facts the importers have recently offered to make withdrawal entry and pay the duties on the remainder of the merchandise at the rate prescribed by the tariff act of August 28, 1894. This offer has not been accepted by the Treasury Department, but authority has been given to make a withdrawal entry of a portion of the merchandise at the rate prescribed by the tariff act of 1883, in order that a decision of the board of general ap-
26 praisers and of the court, as to the legal rate of duty chargeable thereon when withdrawn for consumption, may be obtained.

CHARLES S. HAMLIN,
Acting Secretary of the Treasury.

J. M. C.
J. A. M.

J. F. EVANS,
Att'y for Protestants.

EXHIBIT "H."

Letter of Bellingall to Evans.

P. W. Bellingall, ship and custom-house broker, 508 Battery street, opposite post-office; telephone 984.

References: Donohue Kelly Banking Co., Murphy, Grant & Co.; J. N. Knowles, R. Dunsmu-r & Sons, Abner Doble Co., Jas. de Fremery & Co., John Rosenfeld's Sons, R. D. Chandler, Jno. L. Howard.

SAN FRANCISCO, *M'ch 19th*, 1895.

Mr. J. F. Evans, Washington, D. C.

DEAR EVANS: In regard to the steel rails of Oregon Pac. R. R., I want to say as broker for Col. Hoge and the Bank of California, that the extension of time on bonds as mentioned in protest forwarded to board of general appraisers at New York, said extension was granted by Secretary of the Treasury without any intervention of mine.

As to the collection of duties on withdrawals after passage of McKinley bill, I insisted on paying duty in accordance with sec. 50, said bill. No peculiar influence was brought to bear on any
27 official connected with the passing of entries through custom-house, on the contrary, I will remember having called on Spec. Dep. Collector Jerome after I had passed first withdrawal under McKinley act, and called his attention to fact that withdrawal clerk seemed to think there was a question as to rate of duty, whereupon Mr. Jerome asked for instructions from dep'tm't, the reply to his query I never saw, nor heard of to the best of my knowledge and belief, until after the arrival of Special Agent Hanlon and others at this port. I still hold my opinion of the law and am at a loss to see how the department can claim that the goods are not in bond and entitled to withdrawal, same as other goods so long as they admit that they can be withdrawn for consumption.

Respectfully, P. W. BELLINGALL.

Subscribed and sworn to before me this 20th day of March, 1895.

[SEAL.] A. F. DANGLADA,

Notary Public in and for the City and County of San Francisco, State of California.

EXHIBIT "J."

Affidavit of George H. Probasco.

I, George H. Probasco of San Francisco, State of California, do hereby certify that I am and have been since July 1, 1887, an employé of P. W. Bellingall, custom-house broker of San Francisco, and in such capacity prepared the custom-house warehouse
28 entry covering an importation of 9,126 steel rails imported by the Bank of California, ex the Br. Sh. "Troop" from Barrow,

arrived Mar. 2, 1887, and more fully described in warehouse entry bond No. 1031 (invoice No. 2733); that all the withdrawals made against this bond No. 1031, were prepared and written by me; that I saw department telegram of M'ch 7, 1890, which permitted these rails to remain in warehouse beyond the limit of three years; that I have seen and am familiar with other orders of like character made at different times by the Treasury Department relative to these rails, and that the withdrawals made by me at the rate of duty in vogue at the time of withdrawal were made in good faith under the impression that said rate was correct and proper; that I discussed with my employer the said P. W. Bellingall of the believed to be erroneous exaction of 10 per cent. additional duty under sec. 2,970, Revised Statutes, and that at no time, by intimation or otherwise, did I know or suspect of the existence of a letter, order or other document showing that these rails should be withdrawn only on the payment of $17.00 per ton, nor did I have any knowledge of the existence of such a document until the arrival here of Special Agents Hanlon and Crites, about June, 1894.

GEORGE H. PROBASCO.

Subscribed and sworn to before me this 18th day of M'ch, 1895.

[SEAL.] A. F. DANGLADA,

Notary Public in and for the City and County of San Francisco, State of California.

29 EXHIBIT "K."

Opinion of General Appraisers.

(G. A.—3054.)

Merchandise as remaining in bonded warehouse more than three years dutiable at the rate in force at the time of withdrawal.

Before the U. S. general appraisers at New York, April 19, 1895.

In the matter of the protest, 26439 *b*–3876, of the Anglo-Californian bank against the decision of the collector of customs, at San Francisco, as to the rate and amount of duties chargeable on certain merchandise, imported per "Troop;" arrived March 2, 1887.

Opinion by SHARRETTS, general appraiser:

We find the material facts in this case to be as follows, to wit:

The Bank of California at various times between March 2, and June 24, 1887, imported into the port of San Francisco, certain (T) steel rails aggregating 5,678 tons. These rails remained in general order unclaimed until February 27, 1888, when warehouse entries thereof were made and bonds given by the Bank of California as importer and consignee. Said warehouse entries were liquidated under the act of March 3, 1883, at $17 per ton, and at the expiration of one year from the date of the importation the additional duty of 10 per cent. prescribed by section 2970, Revised Statutes, was

charged up on the bonds against the merchandise. Between September 21, 1888, and December 6, 1889, four withdrawals for consumption were made and the amount of duties charged
30 thereon was paid. When the bonded period of three years was about to expire the Oregon Pacific Railroad Company, for whose account the steel rails in question had been imported, represented to the Treasury Department that serious casualties had occurred to its road by storms and floods, and requested a postponement of the sale of merchandise required under section 2971, Revised Statutes, whereupon the Secretary of the Treasury authorized a postponement of the sale for three months without giving due notice to, or having the consent of the principal or sureties on the warehouse bonds. Similar postponements have been allowed for periods of six months up to the present date, the Bank of California uniting in two instances in the application for delay. A postponement of the sale of the merchandise allowed by the Secretary of the Treasury, September 16, 1893, was conditioned upon the consent of the sureties on the bond. The final postponement was authorized by the Secretary of the Treasury, March 25, 1895, pending decision regarding the legal status of the goods by the board of general appraisers. Under date of June 30, 1890, more than three years after the date of importation, the Secretary of the Treasury authorized the collector at San Francisco to permit withdrawals for consumption of the steel rails in question, from time to time, in such quantities as might be desired. On October 21, 1890, the Treasury Department decided that withdrawals might be made under the act of 1890, by the importers, at the rates of duty regular and additional prescribed by the act of 1883. Notwithstanding this decision, 3,306 tons of steel rails were withdrawn for
31 consumption, and in addition to 10 per cent. as prescribed by section 2970, Revised Statutes, duties were paid thereon and accepted by the collector at $13.44 per ton, the rate prescribed therefor in act of October 1, 1890. All charges and expenses, including storage charges, have been paid, the importers recently offered to withdraw for consumption the remainder of the merchandise in bonded warehouse at the rate prescribed in paragraph 117, of the act of August 1, 1894. Permission to make such withdrawals has not been granted by the Secretary of the Treasury, but in lieu thereof authority has been given the collector to permit withdrawal entry to be made by the importers of a small portion of the merchandise, at the rates prescribed in the act of March 3, 1883, in order that a test case for judicial decision might be made. In accordance with the authority thus granted entry for consumption of twenty of the steel rails in question (weighing about 5 tons), was made by the importers, and duty was assessed thereon by the collector at $17 per ton, and ten per cent. additional under the act of March 3, 1883, the act in force at the time the merchandise was imported. Against this action the importers protested, claiming that the merchandise in question having been withdrawn for consumption after August, 1894, was properly dutiable at seven-twentieths of 1 cent per pound in accordance with the provisions of sec-

tion 1 and paragraph 117, of the present act. That protest is now before the board for decision.

With the goods still remaining in bonded warehouse, viz:
32 about 2,370 tons, we are not concerned, we are only to pass upon the rate and amount of duty chargeable upon the twenty steel rails covered by this protest. The Attorney General, under date of January 17, 1895, expressed the opinion that "goods imported and entered for warehouse prior to the act of 1894, and not withdrawn for consumption within three years from the date of original importation are unaffected by the new rates of duty, and the duties mentioned in section 2972, Revised Statutes, are the duties to which they were previously subject, whatever be the construction to be put upon this section in other respects. My opinion applies not only to goods imported within three years before the act of 1894 took effect, but to all goods theretofore imported, and there subject to the tariff rate of 1890." Section 1 of the act of 1894 provides "that on and after the first day of August, 1894, unless otherwise specially provided for in this act, there shall be levied, collected and paid upon all articles imported from foreign countries or withdrawn for consumption and mentioned in the schedules herein contained the rates of duty which are by the schedules and paragraphs respectively prescribed."

The words "or withdrawn for consumption" are new matter, not appearing in the acts of 1883 or 1890, and there is abundant proof furnished by the debates in Congress to show that they were intended to place all merchandise in bonded warehouses prior to August 1, 1894, and entered for consumption after that date upon a parity with respect to rates of duty with merchandise imported on
33 and after August 1, 1894. The use of the conjunction "or" instead of "and," is in itself persuasive of the intent of Congress in this respect, if not conclusive. There is no provision in the act of 1894 which by terms or even by implication, excludes any class of merchandise withdrawn for consumption after August 1, 1894, from entry at the reduced rates provided for therein.

Section 2970, of the Revised Statutes, was repealed by section 54, of the act of 1890, hence we need not refer to the provisions thereof. Section 2971, provides that any goods remaining in bonded warehouse beyond three years shall be regarded as abandoned to the Government, and sold under such regulations as the Secretary of the Treasury may prescribe, etc. The right of the Secretary of the Treasury to have authorized the sale of all the steel rails remaining in bonded warehouse more than three years after importation cannot be questioned, but the fact is that the twenty steel rails in question were not sold nor listed for sale, and that they were with his advice and consent withdrawn for consumption after August 1, 1894. Article 1031, Treasury Regulation for 1884, would seem to justify the Secretary of the Treasury in electing to permit withdrawal of the merchandise for consumption, instead of decreeing its sale. This point, however, in our opinion, is not a factor in the case.

It is not within our jurisdiction to pass upon the validity of the importer's entry. We can only pass upon the issue raised by this protest, and hold that the twenty steel rails in question, have been withdrawn for consumption after August 1, 1894, are dutia-
34 ble at seven-twentieths of 1 per cent. per pound under the provision of paragraph 117, act of 1894, for T rails.

The protest is sustained and the collector's decision is reversed.

WILBUR F. LUNT.
J. B. WILKINSON, JR.
THAD. S. SHARRETTS.

And for a certified statement of facts involved in said matter, as ascertained by them, the said board states that said facts are fully set forth in the decision aforementioned, and that no other facts were ascertained by said board than such as are shown by said decision and other exhibits here attached.

WILBUR F. LUNT,
J. B. WILKINSON, JR.,
THAD. S. SHARRETTS,
Board of U. S. General Appraisers.

(Endorsed:) U. S. circuit court. No. 12070. In the matter of the application of The Anglo-Californian Bank for a review of the decision of the board of U. S. general appraisers as to the rate and amount of duty on certain imported merchandise. Return of the board of U. S. general appraisers. Filed June 18, 1895. W. J. Costigan, clerk, by W. B. Beaizley, deputy clerk.

35 THE UNITED STATES OF AMERICA:

In the Circuit Court of the United States, Ninth Circuit, in and for the Northern District of California.

The petition and application of the Secretary of the Treasury for a review, under an act of Congress approved June 10, 1890, entitled "An act to simplify the laws in relation to the collection of revenues," of the questions of law and fact involved in a decision of the board of general appraisers on duty at the port of New York, State of New York, in matter of the classification of certain (T) steel rails, merchandise imported by the Bank of California of San Francisco, California, into the port of San Francisco, the subsequent liquidation of duties whereon was protested by the Anglo-Californian Bank, Limited, at the same place.

Findings of Fact and Conclusions of Law.

This case and proceeding having come on regularly for hearing before the court in the matter provided by law and the act of June 10, 1890; and the court, after duly considering the evidence and the law, and being fully advised in the premises, having heretofore given and rendered its opinion herein; now, in accordance there-

with, hereby makes and renders its decision, finding the following facts and conclusions of law respecting the classification of the merchandise involved herein and the rate of duty imposed thereon under such classification:

36 *Findings of Fact.*

1.

The Bank of California, at various times between March 2, and June 24, 1887, imported into the port of San Francisco, certain (T) steel rails aggregating 5,678 tons.

2.

These rails remained in general order unclaimed, until February 27, 1888, when warehouse entries thereof were made and bonds given by the Bank of California, as the importer and consignee. Said warehouse entries were liquidated under the act of March 3, 1883, at $17 per ton, and at the expiration of one year from the date of importation, the additional duty of 10 per cent. prescribed by section 2970, Revised Statutes, was charged upon the bonds against the merchandise.

3.

Between September 21, 1888, and December 6, 1889, four withdrawals for consumption were made, and the amount of duties charged thereon was paid. When the bonded period of three years was about to expire, the Oregon Pacific Railroad Company, for whose account the steel rails in question had been imported, represented to the Treasury Department that serious casualties had occurred to its roads by storms and floods, and requested a postponement of the sales of merchandise required under section 2971, Revised Statutes, whereupon the Secretary of the Treasury authorized a postponement of the sale for three months without giving
37 due notice to, or having the consent of the principal or sureties on the warehouse bonds. Similar postponements have been allowed for periods of six months, up to the present date, the Bank of California uniting in two instances in the application for delay. A postponement of the sale of the merchandise allowed by the Secretary of the Treasury, September 16, 1893, was conditioned upon the consent of the sureties on the bond. The final postponement was authorized by the Secretary of the Treasury, March 25, 1895, pending decision regarding the legal status of the goods by the board of general appraisers.

4.

Under date of June 30, 1890, more than three years after the date of importation, the Secretary of the Treasury authorized the collector at San Francisco to permit withdrawals for consumption of the steel rails in question, from time to time, in such quantities as might be desired. On October 21, 1890, the Treasury Department decided

that withdrawals might be made by the importers, at the rates of duty regular and additional prescribed by the act of 1883. Notwithstanding this decision, 3,306 tons of the steel rails were withdrawn for consumption, and in addition to 10 per cent. as prescribed by section 2970 Revised Statutes, duties were paid thereon and accepted by the collector at $13.44 per ton, the rate prescribed therefor in the act of October 1, 1890.

5.

All charges and expenses, including storage charges, having
38 been paid, the importers, on the 8th day of February, 1895, offered to withdraw for consumption the remainder of the merchandise in bonded warehouse, at the rate prescribed in paragraph 117 of the act of August 28, 1894. Permission to make such withdrawal was not granted by the Secretary of the Treasury, but in lieu thereof authority was given the collector to permit withdrawal entry to be made by the importers of a small portion of the merchandise, at the rates prescribed in the act of March, 3, 1883, in order that a test case for judicial decision might be made as to the rates of duty properly chargeable.

6.

In accordance with the authority thus granted, entry for consumption of twenty of the rails in question (weighing about 5 tons), was made by the importers March 16, 1895, and duty was assessed thereon by the collector, at $17 per ton, and 10 per cent. additional, under the act of March 3, 1883, the act in force at the time the merchandise was imported. Against this action the importers have duly protested, claiming that the merchandise in question, having been withdrawn for consumption after August, 1894, was properly dutiable at seventwentieths of 1 cent per pound, in accordance with the provisions of section 1, and paragraph 117, of the present act of August 28, 1894.

39 *Conclusions of Law.*

As conclusions of law the court finds:

I.

That at the expiration of three years from the time of its original importation, to wit: on the 24th day of June, 1890, the merchandise in question became abandoned to the United States, and subject to sale as such, under sections 2970, 2971 and 2972, U. S. Revised Statutes, to satisfy the duties and charges thereon then in force, to wit: the duty of $17 a ton, under paragraph 147 of the tariff act of March 3, 1883, and 10 per cent. thereon with warehouse charges.

II.

The right of the United States to sell said merchandise at said time, and deduct from the proceeds thereof said amount of duties and charges, was a right accrued at said time to the United States,

and a liability incurred by said merchandise, and the importer thereof, within the meaning of section 29 of the customs administrative act of June 10, 1890; section 55 of the tariff act of October 1, 1890, and section 72 of the tariff act of August 28, 1894, and hence was preserved to the United States by said acts, and is now in full force and effect.

III.

That said section 2971, U. S. Revised Statutes, was and is not repealed or modified by said customs administrative act of June 10, 1890, in section 20 thereof, as amended, nor by said tariff act of October 1, 1890, in section 50 and 54 thereof, the latter amending said section 20, nor by said tariff act of August 28, 1894, in its enacting clause, but is now, and since its enactment, has been in full force and effect and the amount of duty and charges properly assessed against, and collected thereunder from the proceeds of the sale of said goods, or from the importer thereof, by the collector of customs for the port of San Francisco, California, are those in force at the said time of abandonment, to wit: the 24th day of June 1890, as provided in said tariff act of March 3, 1883.

IV.

That the withdrawal entry of said merchandise was properly liquidated by said collector of customs, and the amount of duties and charges exacted and collected by said collector upon the withdrawal of said merchandise from bond, to wit: the sum of $92.20 was lawfully exacted and collected.

V.

That the decision of the board of U. S. general appraisers herein is reversed and set aside, and the petitioner herein is entitled to a judgment therefor, with the costs against said importers.

Let judgment be entered in accordance therewith.

Dated November, 1895.

JOSEPH McKENNA,
Circuit Judge.

(Endorsed:) Filed November 7, 1895. W. J. Costigan, clerk.

41 THE UNITED STATES OF AMERICA:

In the Circuit Court of the United States, Ninth Circuit, Northern District of California.

The petition and application of the Secretary of the Treasury for a review, under an act of Congress approved June 10th, 1890, entitled "An act to simplify the laws in relation to the collection of revenues," of the questions of law and fact involved in a decision of the board of general appraisers on duty at the port of New York, State of New York, in the matter of the classification of certain (T) steel rails, merchandise imported by the Bank of California of San Francisco, California, into the port of said San Francisco, the subsequent liquidation of duties whereon was protested by the Anglo-Californian Bank, Limited, at the same place. No. 12070.

Judgment.

This matter came on to be tried before the court upon the petition, report of the United States general appraisers, and argument of counsel duly heard and considered, and the court having found the facts and conclusions of law therefrom, and the same having been filed, ordered that judgment be entered in accordance therewith.

Wherefore, by virtue of the law and the findings aforesaid, it is ordered, adjudged and decreed that the decision of the board of United States general appraisers herein, be, and hereby is reversed and set aside, and that said petitioner, the Secretary of the
42 Treasury of the United States, have and recover from the Bank of California, importers of the merchandise referred to in this matter, his costs and disbursements incurred in this matter, amounting to the sum of $34.85.

Entered this 7th day of November, A. D. 1895.

W. J. COSTIGAN, *Clerk.*

A true copy.
Attest: W. J. COSTIGAN, *Clerk.*

In the Circuit Court of the United States, Ninth Judicial Circuit in and for the Northern District of California.

In the matter of the application of the Secretary of the U. S. Treasury for a review of decision of U. S. general appraisers relative to certain 20 steel rails., etc. No. 12070.

Certificate to Judgment-roll.

I, W. J. Costigan, clerk of the circuit court of the United States of the ninth judicial circuit, northern district of California, do hereby certify that the foregoing papers hereto annexed constitute the judgment-roll in the above-entitled matter.

Attest my hand and the seal of said circuit court this 7th day of November, 1895.

[SEAL.] W. J. COSTIGAN, *Clerk.*

(Endorsed:) Judgment-roll. Filed November 7, 1895. W. J. Costigan, clerk.

43 In the Circuit Court of the United States, Ninth Judicial Circuit, Northern District of California.

In the matter of the petition of the Secretary of the Treasury for review of a decision of the board of United States general appraisers relative to certain twenty steel rails. No. 12070.

Opinion.

Before the Honorable Joseph McKenna, circuit judge.

H. S. Foot, Esq., United States attorney, and Samuel Knight, Esq., assistant U. S. attorney, for petitioner; Charles A. Garter, Esq., and J. F. Evans, Esq., for respondents.

MONDAY, *September 16th*, 1895.

MCKENNA, *Circuit Judge:*

The facts of the case are stipulated by the parties and are cited in the opinion of the board of appraisers as follows: "The Bank of California at various times between March 2, and June 24, 1887, imported into the port of San Francisco certain (T) steel rails, aggregating 5,678 tons. These rails remained in general order unclaimed until February 27, 1888, when warehouse entries thereof were made and bonds given by the Bank of California as the importer and consignee. Said warehouse entries were liquidated under the act of March 3, 1883, at $17 per ton, and at the expiration of one year from the date of importation the additional duty of 10 per cent. prescribed by section 2970, Revised Statutes, was charges upon the bonds against the merchandise. Between September 21,
44 1888, and December 6, 1889, four withdrawals for consumption were made and the amount of duties charged thereon was paid. When the bonded period of three years was about to expire the Oregon Pacific Railroad Company, for whose account the steel rails in question had been imported, represented to the Treasury Department that serious casualties had occurred to its road by storms and floods, and requested a postponement of the sale of merchandise required under section 2971, Revised Statutes, whereupon the Secretary of the Treasury authorized a postponement of the sale for three months without giving due notice to or having the consent of the principal or sureties on the warehouse bonds. Similar postponements have been allowed for periods of six months up to the present date, the Bank of California uniting in two instances in the application for delay. A postponement of the sale of the merchandise allowed by the Secretary of the Treasury September 16, 1893, was conditioned upon the consent of the sureties on the bond. The final postponement was authorized by the Secretary of the Treasury March 25, 1895, pending decision regarding the legal status of the goods by the board of general appraisers. Under date of June 30, 1890, more than three years after the date of importation, the Sec-

retary of the Treasury authorized the collector at San Francisco to permit withdrawals for consumption of the steel rails in question, from time to time, in such quantities as might be desired. On October 21, 1890, the Treasury Department decided that withdrawals might be made under the act of 1890, by the importers, at the rates of duty regular and additional prescribed by the act of 1883. Not-
45 withstanding this decision, 3,306 tons of the steel rails were withdrawn for consumption, and in addition to 10 per cent. as prescribed by section 2970 Revised Statutes, duties were paid thereon and accepted by the collector at $13.44 per ton, the rate prescribed therefor in the act of October 1, 1890. All charges and expenses, including storage charges, having been paid, the importers recently offered to withdraw for consumption the remainder of the merchandise in bonded warehouse at the rate prescribed in paragraph 117 of the act of August 1, 1894. Permission to make such withdrawal has been granted by the Secretary of the Treasury, but in lieu thereof authority was given the collector to permit withdrawal entry to be made by the importers of a small portion of the merchandise at the rates prescribed in the act of March 3, 1883, in order that a test case for judicial decision might be made. In accordance with the authority thus granted, entry for consumption of twenty of the rails in question (weighing about 5 tons) was made by the importers, and duty was assessed thereon by the collector at $17 per ton and 10 per cent. additional under the act of March 3, 1883, the act in force at the time the merchandise was imported. Against this action the importers protested, claiming that the merchandise in question having been withdrawn for consumption after August, 1894, was properly dutiable at seven-twentieths of 1 cent per pound in accordance with the provisions of section 1, and paragraph 117 of the present act."

The tariff act of 1883 was in force at the time of the im-
46 portation of the rails, and continued in force until the enactment of the act of 1890, known as the McKinley bill. Under the latter act, the duty was made $13 per ton, and under the act of August, 1894, known as the Wilson act, it was made $7.84.

As is well known, imported merchandise could be entered for immediate consumption, or it could be entered for warehousing; and in the latter case were certain provisions of law applicable to it.

Section 2970, R. S., provided for the periods for which, and the terms upon which merchandise could remain in bond without paying duty. It could remain for one or three years, and during such times it could be withdrawn for consumption. If in one year, "on payment of the duties and charges, to which it may be subject by law at that time." If after one year, and before the expiration of three years, "on payment of the duties assessed on the *original entry and charges*, and an additional duty of ten per centum of the amount of such duties and charges. (The italics are mine.) After three years the permission to withdraw goods for consumption expired, and section 2971, provided that "any goods remaining in public store, or bonded warehouse beyond 3 years, shall be regarded as abandoned to the Government, and sold under such regulations as

the Secretary of the Treasury may prescribe, and the proceeds paid into the Treasury." But section 2972, provided that the Secretary in case of sale may pay to the owner, &c., the proceeds thereof after deducting duties, charges and expenses.

In 1890, Congress enacted a law to simplify the collection of revenues, called the administrative act, section 20, of which
47 provided for the withdrawal for consumption of bonded goods, which was amended by section 54, of the McKinley act. The section as amended is as follows, omitting a proviso with which we are not concerned: "That any merchandise deposited in bond, in any public or private bonded warehouse may be withdrawn for consumption within 3 years from the date of original importation on payment of the duties and charges to which it may be subject by law at the time of such withdrawal." The difference between this section and section 2970 of the R. S., is that it makes but one period—3 years, and provides that the goods withdrawn any time within it shall be subject to the duty then provided by law. This act contained no provision for goods not withdrawn within 3 years, nor did the administrative act have such provision. If left provided for at all, it was by sections 2971 and 2972 R. S., *supra*. The administrative act explicitly repealed a number of sections of the R. S., but not those sections, and added "and all other acts and parts of acts inconsistent with the provisions of this act are hereby repealed.

"But the repeal of existing laws or modifications thereof embraced in this act shall not affect any act done or any right accruing or accrued * * * but all liabilities under said law shall continue and may be enforced in the same manner as if said repeal or modifications had not been made. * * *"

Section 50 of the McKinley act, which is the only other one necessary to quote in full, is as follows:

"SEC. 50. That on and after the day when this act shall go into effect all goods, wares and merchandise previously imported,
48 for which no entry has been made, and all goods, wares and merchandise previously entered without payment of duty and under bond for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to other duty upon the entry or the withdrawal thereof than if the same were imported respectively after that day: Provided, that any imported merchandise deposited in bond in any public or private bonded warehouse, having been so deposited prior to the first day of October, eighteen hundred and ninety, may be withdrawn for consumption at any time prior to February first, eighteen hundred and ninety-one, upon the payment of duties at the rates in force prior to the passage of this act: Provided, further, that when duties are based upon the weight of merchandise deposited in public or private bonded warehouse, said duties shall be levied and collected upon the weight of such merchandise at the time of its withdrawal."

The act also repealed all prior inconsistent laws, but saved all

rights which had accrued, by the same words as the administrative act, *supra*.

The Wilson act contained no administrative provisions with which this case is concerned. A claim however, is based on its first section, which will be referred to hereafter.

From this statement of the facts and the statutes, the question is, to what duty was the merchandise subject? The Secretary of the Treasury decided that of the act of 1883, or $17 per ton, and on the grounds which apply to the whole importation. The board
49 of appraisers decided that of 1894, or $7.84 per ton, but on grounds which confine the decision to 20 rails, or 5 tons only. This is to be regretted, as it leaves us without the views of the board (necessarily valuable) of the regulations of the act of Congress.

The board bases its decision on the act of the Secretary in authorizing the withdrawal of the merchandise for consumption, but the stipulation of the parties is that this was to enable the right to be tested, not to make the right. Besides, if the importers can claim this against intention, the difficulties of the matter are not solved or even evaded. The question then occurs, what right has the Secretary to permit a withdrawal for consumption, under the circumstances, or if he have this right as an alternative of a sale, at what duty; and the question can only be answered by determining the changes which the McKinley and Wilson acts make in pre-existing laws. Necessarily therefore, a decision as to the five tons involved in this case is a test of the whole importation, and I have given the contentions of parties a proportionate attention.

The merchandise as we have seen was imported in 1887, and entered for warehousing Feb. 27, 1888, and the duties liquidated under the act of 1883, and a bond given by the importers to secure their payment. Under the law the rights and liabilities of the importers were very plain. They could have withdrawn the merchandise for consumption in one year upon paying the duties, to wit: $17 per ton—that being the duty they were subject to, the law of 1883 being then in force. Or, after said year and within three years from June, 1887 (the date of the last importa-
50 tion), they could have withdrawn the merchandise upon paying such duty, and 10 per cent. additional duty. Some of the merchandise was withdrawn before the expiration of three years, and the duties paid, but the greater part of it, including the rails in controversy, was not withdrawn, and on the 24th day of June, 1890, became subject to sections 2971, 2972 and 2973 of the Revised Statutes, *supra*. In other words, became to be regarded as abandoned to the Government, and to be subject to sale by the Secretary of the Treasury to satisfy the then duty, to wit: $17 and 10 per cent. additional and charges. This was the status at that date—the right of the Government—the liability of the merchandise indisputably, and were only not exacted or enforced because the Oregon Pacific Railway Co., for whose account the merchandise was imported, requested a postponement of the sale for three months, representing that serious casualties had occurred to its road. Other postponements by like request, the sureties on warehouse bond consenting, for periods

of six months were given. Pending these periods the tariff acts with the provision *supra*, were passed.

The question raised by these facts is direct. Did the right which undoubtedly accrued on the 24th of June, 1890, continue after the passage of the McKinley and Wilson acts. Or, using saving language—was it not, regarding the Government, "a right accruing or accrued"—was it not regarding the merchandise "a liability under a prior law," continued under said acts.

It seems necessarily that the answer must be in the affirm-
51 ative. The Government had a right in the juridical sense of that word, that is an enforceable claim. It came into existence in June, 1894, and existed for nearly two months before the passage of the administrative act, and might have been enforced during such time, but for the solicitation of the parties interested in the merchandise, or at any rate, could have been enforced. It was a right "accruing or accrued," therefore, in the legal and proper sense of those words, and presumably in the sense in which they were intended by such act and the McKinley act.

Prior to the decision of the Supreme Court in U. S. *vs.* Burr, — Supreme Court Reporter, page 1002, it could have been plausibly contended that the rights saved by the act were not those of the United States or not claims to duties, and the former was so held by the circuit court (66 Fed., 742). The Supreme Court, however, took a different view, and held that the act preserved the rights of the Government as well as the rights of the importers and included claims to duties.

The conflict settled in that case was between the McKinley and Wilson acts, and the merchandise in controversy arrived Aug. 7, 1894, duties were paid Aug. 8th, and the merchandise delivered Aug. 11th, but it was not until Aug. 28th, that the fact was stamped on the entry that the goods were liquidated as entered. The Wilson act went into effect Aug. 28th, but its first section provided "that on and after the 1st day of August, 1894 * * * there
52 shall be levied and collected * * * the rates of duty which are by the schedules and paragraphs respectively prescribed." * * * And it was contended from the plain language the court was imperatively required to conclude that it was the intention of Congress that the act should have a retrospective operation as of August 1st, although it did not become a law until that date. The court refused to make this literal application of the words of the statute and said through Chief Justice Fuller:

"And upon the threshold we are met with the fact that the act of October 1, 1890, was not repealed in terms until August 28, 1894; and that the repealing section of the latter act kept in force every right and liability of the Government or of any person which had been incurred or accrued prior to the passage thereof, and thereby every such right or liability was excepted out of the effect sought to be given to the first section."

"The right of the Government to duties under the tariff law, which existed between August 1st, and August 28th, was a right accruing prior to the passage of the act of 1894 (that is, the date

when the bill became a law); and the obligation of the importers between August 1st and August 28th, to pay the duties on their entries, under the existing tariff law, was a liability under that law arising prior to the passage of the act of 1894; and, if Congress intended that section 1 should relate back to August 1st, still the intention is quite as apparent that the act of October, 1890, should remain in full force and effect until the passage of the new act on August 28th, and that all acts done, rights accrued, and lia-
53 bilities incurred under the earlier act, prior to the repeal, should be saved from the effect thereof as to all parties interested, the United States included."

This construction satisfies the natural meaning of the language of the acts, and gives effect, and consistent effect to every provision. But without the provisions of the acts, saving rights and continuing liabilities accruing or accrued under prior laws, it is disputable if the contention of the importers could be sustained under the ruling in Fabri, *vs.* Murphy, 95 U. S., 191.

In that case it appeared that sugar was imported in Nov. 1869, which was entered for warehousing. It was classified under the law then in force as No. 12 Dutch standard, and the duty of 3 cents per pound assessed against it. While it was in the warehouse and before the expiration of a year, the act of Dec. 22, 1870, was passed, providing for a lower rate of duty, and making it applicable to goods in bonded warehouse upon the entry thereof for consumption. Under this act the sugars were reclassified by appraisers as No. 7 Dutch standard, and a rate of entry noted at 1¾ cents per pound. On the 20th of January, 1871, the importers made a withdrawal entry of the sugars for consumption, and the collector charged them with the lesser duty of the act of 1870, but exacted as a penalty 10 per cent. additional of the duties which had been assessed on the original entry. At the time of the original entry the act of March 14, 1866, was in force. This was the original of section 2970, R. S., and provided that goods could be withdrawn for consump-
54 tion within one year from the date of original importation on payment of the duties and charges to which they may then be subjected by law. After a year, and before the expiration of three years they could be so withdrawn on payment of the duties assessed on the original entry, and charges and an additional 10 per cent. of the amount of such duties and charges.

Payment of the original duty was made without objection, but protest was made against payment of the ten per cent., and suit was instituted to recover the amount. Judgment went against the importers, and it was affirmed by the supreme court.

There was no express repeal of the old act, but its consistency or inconsistency with the new one was directly presented for decision. The supreme court held that there was no inconsistency. Mr. Justice Clifford, speaking for the court, repeating the rule of Wood *vs.* United States, 16 Pet. 342, said that to work a repeal of an old law there must be a positive repugnancy between it and the new one, and further said that such repeal is not favored in any case and must always meet with disfavor where the attempt is made to ap

ply the principle in the construction of revenue laws of the United States.

"Acts of Congress," the learned judge also said, "are often very complex in their provisions in order to enable those charged with their execution to protect the Treasury against the constant attempts of importers to evade the payment of new duties or increased taxation. New regulations often become necessary to enable officers of the customs to defeat such designs; and the rule is that in
55 such cases there ought to be a manifest and irreconcilable repugnancy to warrant the conclusion, that the old law is abrogated, or that the new law was intended to supersede the antecedent provision. Aldridge *v.* Williams, 3 How., 9; The Distilled Spirits, 11 Wall. 256."

Counsel for claimants, cites to sustain his contention, *In re* Schmid, 54 Fe*b.* 145, and U. S. *vs.* Abbott, 20 Court of Claims Rep. 281.

The facts in *In re* Schmid, were not the same as the facts of the case at bar. In that case the merchandise was imported, and entered Jan. 10, and March 9, 1889, and remained in warehouse until Jan. 1891—in other words, the time during which it could be withdrawn, the consumption had not expired, hence it was in one of the classes of sec. 50, of the McKinley act, that is, was under bond for warehousing (to quote the language of the section), and subject to withdrawal for consumption, upon which act and time, the duties were to be levied, as of October 1st, 1890.

This distinguishes the case from the case at bar. In the case at bar the time within which the steel rails could have been withdrawn had expired fully under the law to which they were subject when imported, and before the enactment of the administrative or McKinley acts, and therefore the Government's claim was a "right accrued," and saved by the provision of those statutes that then repealing clauses or modifications should not affect "any right accruing or accrued."

It is certainly the duty of interpretation to give effect to these provisions as well as to sec. 50, and both can only be given effect by respectively applying them to the different conditions
56 recognized or created by the law. The former where rights have accrued against the merchandise—the latter where it is still subject to the demand of the importers. The difference in the conditions may be less substantial under the late acts than under the prior ones, but they are still maintained.

The administrative act (sec. 20), and the McKinley act (sec. 54), which amended it, provide for a bonded period of 3 years, and neither repeal sec. 2971 of the R. S. which provides for abandonment of the merchandise and the right of the Secretary of the Treasury to sell it.

In Abbott *vs.* U. S., the fact as to the time the merchandise was in the warehouse is the same as the case at bar, that is, it remained there more than three years after its importation. The question came up on a refund of duties, they having been paid within the three years. This, however, makes no difference in principle, and the case sustains the contention of the importers. It, however, seems

not to have been very well considered. It involved the construction of sec. 10 of the tariff act of 1883, and sections 2970 and 2971 of the R. S., *supra*. Sec. 10 of the act of 1883 was a repetition of the act of 1870, and section 2970, of the R. S., was a substantial repetition of the act of March 14, 1866. In Fabri *vs.* Murphy, *supra*, both acts were passed on and held consistent, and hence, both in force; and the additional duties prescribed by the latter, legal. If the provisions of the acts were consistent in 1870, they were consistent in 1885. Fabri *vs.* Murphy, does not ap-
57 pear to have been drawn to the attention of the Court of Claims. The decision no doubt responded only to the points presented, and in the manner presented, and hence, took only a partial view of the statutes. The court seemed to be controlled by what it deemed the all-embracing language of section 10, of the act of 1883, and conceived that because the proceeds of the sale of merchandise derelict under section 2971, were not absolutely forfeited, the Government could not have any rights in it at all, a view which ignored, even if it could be otherwise sustained, sec. 13, of the act of 1883, which provided, "that the repeal of existing laws or modification thereof, embraced in this section, shall not affect any act done or right accrued * * * before the said repeal or modifications; but all rights and liabilities under said laws shall continue, and may be enforced in the same manner as if said repeal or modifications had not been made." * * *

The claimants contend that the Wilson act is even more comprehensive and conclusive than the McKinley act, and determines the rate of duty to be collected on the rails in controversy at $7.84 a ton.

The first section which is relied on, is as follows:

"Be it enacted, &c. That on and after the first day of August, 1894, unless otherwise specifically provided for in this act, there shall be levied and collected and paid upon all articles imported from foreign countries or withdrawn for consumption and mentioned in the schedules herein contained, the rates of duty which are by the schedules and paragraphs respectively prescribed, namely: * * *

58 "117. Railway bars made of iron or steel, and railway bars made in part of steel T rails and punched iron or flat rails, seven-twentieths of one cent. per pound."

Section 72 repealed prior inconsistent laws, but preserved rights and liabilities which had accrued or arisen thereunder substantially in the same language quoted from the administrative and McKinley acts, *supra*.

The efficiency of the section to the contention is in the words "withdrawn for consumption." But what they mean has already been sufficiently explained. As we have seen all the acts provided a period during which goods could remain in bond—they all fix it at three years, and it is only within this period that goods may be "withdrawn for consumption," and hence it is to this period and to what may be done within it that the language of the section must be regarded as addressed. By so regarding it, no policy of the new

act is disappointed, as urged by counsel for claimant. Its policy undoubtedly was to reduce rates, but it was consistent—indeed suitable—to have considered some things as done, some rights having accrued, and to leave them undisturbed. Besides, we know that the authors and advocates of the measure in the House of Representatives did not deem that its policy depended upon the use of the words "withdrawn for consumption" in the situation in which we find them in the act. They were inserted in the Senate. Does the debate there show their purpose?

59 Counsel says that it shows agreement between Senators "presenting," to quote counsel, "all shades of opinion on tariff policy on the following propositions: (1) that there should be the same rate for goods in bond as for those to arrive; (2) that goods withdrawn from bond should pay the same rate of duty as others; and (3) that the words of the amendment would certainly insure these objects." Senator Hale, however, who participated in the debate, and who ought to have been in the center of its certainty and light—charged, without distinguishing by shades of tariff opinion, the most veteran Senators with diversity on every proposition concerning the amendment, and said, "While there is not anything partisan in the four simple words 'or withdrawn for consumption,' yet there were as many theories advanced as to what the amendment meant and whether it ought to be in the bill or out, and as to whether it is found in some other section of some other law, as there were Senators who rose in their seats to discuss the matter." And addressing the advocates of the measure specially, he said: "But let us at least be relieved from uncertainty about what ought to be the plainest provision, and appeal to the Senator from Missouri (Mr. Vest), and through him to the Senator from Arkansas (Mr. Jones), and through both of them, to the Senator from Tennessee (Mr. Hawes), and through all three of them, to the Senator from Texas (Mr. Mills), to let this matter go out for the present, and get together about the table in the room of the Committee on Finance, call in experts from both sides, and give us some language that is authoritative and the meaning of which we know."

60 But assuming that agreement on the proposition stated by counsel may be discerned in the debate, it may also be discerned what was meant by being "in bond," and "withdrawn for consumption," and that the amendment was only the repetition of existing law, these give us some guide to the meaning, and show that its general language was addressed to, and intended to provide for a well-known condition, and was not intended to assimilate all conditions. See remarks of Senators Aldrich, Jones, Vest, Allison and Sherman, Congressional Record, May 10, 1894, page 5430 *et seq.*

A question identical with the one at bar arose under the act of 1883, and was decided by Attorney General Brewster, in accordance with views herein expressed (17 Attorney General's Opinion-, 650). See also opinion of Attorney General Olney of January 17, 1895, substantially to the same effect.

I think, therefore, that the rails in controversy became subject to duty under the act of 1883, and to such duty the Government had acquired a right before the passage of the McKinley and Wilson acts, which was preserved and continued by them.

The decision of the board of general appraisers is, therefore, reversed.

(Endorsed:) Opinion. Filed September 16, 1895. W. J. Costigan, clerk, by W. B. Beaizley, deputy clerk.

61 THE UNITED STATES OF AMERICA:

In the Circuit Court of the United States of America, Ninth Circuit, in and for the Northern District of California.

THE SECRETARY OF THE TREASURY, Petitioner and Appellee,
vs.
THE ANGLO-CALIFORNIAN BANK (LIMITED), Respondent and Appellant.
} No. 12070.

Petition for Order Allowing Appeal.

In the matter of the petition and application of the Secretary of the Treasury for a review, under an act of Congress approved June 10, 1890, entitled "An act to simplify the laws in relation to the collection of revenues," of the questions of law and fact involved in a decision of the board of general appraisers on duty at the port of New York, State of New York, in matter of the classification of certain (T) steel rails, merchandise imported by the Bank of California of San Francisco, California, into the port of San Francisco, the subsequent liquidation of duties whereon was protested by the Anglo-Californian Bank (Limited) at the same place.

The above-named respondent, The Anglo-Californian Bank, (Limited), conceiving itself aggrieved by the judgment and
62 decision made and entered on the 7th day of November, A. D. 1895, in the above-entitled matter, does hereby appeal from said judgment and decision to the United States circuit court of appeals for the ninth circuit for the reason that said judgment and decision was made and entered in a proceeding relative to the customs revenue laws of the United States, and many other cases now pending depend upon the final judgment in the present proceedings as precedents, and the records in this case show that the question involved is of such importance as to require a review of the judgment and decision of said circuit court by the circuit court of appeals, and for the further reasons specified in the assignment of errors which is filed herewith, and it prays that an appeal may be allowed, and that a transcript of the records, proceedings and papers upon which said judgment and decision was made, duly au-

thenticated, may be sent to the said United States circuit court of appeals.

CHAS. A. GARTER,
Attorney for Respondent and Appellant.

63 THE UNITED STATES OF AMERICA:

In the Circuit Court of the United States of America, Ninth Circuit, in and for the Northern District of California.

In the Matter of The SECRETARY OF THE TREASURY, Petitioner and Appellee,
vs.
THE ANGLO-CALIFORNIAN BANK (LIMITED), Respondents *for* Appellant.

Assignment of Errors on Appeal.

Now on this 4th day of December, A. D. 1895, comes the above-named appellant and respondent, by Charles A. Garter, its attorney, and says that the court erred in making the following conclusions of law, to wit:

1. The court erred in its first conclusion of law, which is as follows, to wit:

"That the merchandise involved in this controversy became abandoned to the Government within the meaning of the law, and section 2971, U. S., at the expiration of three years from the date of its original importation; and, at the time of its withdrawal from bond, as aforesaid, such merchandise was such abandoned goods and was liable to be sold under the provisions of section- 2971, 2972, U. S., R. S."

2. The court erred in its second conclusion of law, which is as follows, to wit:

64 "That such merchandise upon its withdrawal from bond aforesaid, was subject to the rates of duty in force at the time of its abandonment, as contained in the tariff act of March 3, 1883, and section 2970, U. S., R. S., regardless of changes in tariff schedules contained in the tariff acts of October 1, 1890, and August 1, 1894, subsequent to such abandonment."

3. The court erred in its third conclusion of law, which is as follows, to wit:

"That said rails are dutiable upon such withdrawals at the rate of $17.00 a ton, under paragraph 147 of said tariff act of March 3, 1883, and such warehouse charges as may have by law accrued thereon, together with ten per cent. of such duties and charges additional thereto, under section 2970, U. S., R. S."

4. The court erred in its fourth conclusion of law, which is as follows, to wit:

"That the decision of the board of U. S. general appraisers herein is reversed, and the amount of duty exacted by the collector of customs for the port of San Francisco, upon the withdrawal of said

merchandise from bond, was lawfully exacted, and the collector of customs for the port of San Francisco should, and he is hereby directed to liquidate the withdrawal entry of said steel rails accordingly."

That the judgment and decision in the above-entitled matter is erroneous, and against the just right of said respondent for the following reasons:

65 1. In that it is ordered, adjudged and decreed that the decision of the board of the United States general appraisers should be reversed, and that the merchandise covered by the decision of the said board of general appraisers should be classified for duty under act of March 3, 1883, at the rate of seventeen ($17) dollars per ton, and ten per centum additional thereon, under section 2970 of the Revised Statutes of the United States.

2. In that said court did not make a judgment or decree affirming the decision of the board of United States general appraisers herein, and adjudged that the said merchandise should be classified for duty at seven-twentieths of one cent per pound, under paragraph 117, Schedule "C," of the tariff act of August 28, 1894, as railway bars specially provided for therein.

3. In that said court did not hold and decide that the merchandise involved herein was legally in bonded warehouse at the time of its withdrawal for consumption, and that the Secretary of the Treasury was vested with legal authority to authorize its withdrawal for consumption.

4. In that said court held and decided that the tariff act of March 3, 1883, has not been repealed by subsequent legislation, and that section 2970 of the United States Revised Statutes has not been repealed.

5. Because the said judgment and decision is not supported
66 by the findings of fact of the court, but is against and contrary to said findings and contrary to law.

6. Because the said judgment and decision is not supported by the findings of fact of the court, but is against and contrary to said findings and contrary to law in this, that the findings show that the merchandise involved was withdrawn for consumption on the 15th day of March, 1895—that is, after August 28, 1894, at which last-mentioned date an act of Congress, entitled "An act to reduce taxation, to provide revenue for the Government and for other purposes" went into effect and was in force at the time of said withdrawal; and the rate of duty, seven-twentieths of one cent per pound, prescribed by said last-mentioned act applied to said merchandise.

7. The said judgment and decision is erroneous and contrary to law in that it purports to make applicable to said merchandise the rate of duty prescribed by the tariff act of March 3, 1883, and an additional duty of 10 per cent. prescribed by section 2970 of the Revised Statutes of the United States, whereas the said last-mentioned act and said section 2970 had been repealed at the time of said withdrawal for consumption, and the provisions thereof did not apply to said merchandise.

8. The said judgment and decision is erroneous in form and con-

trary to law in this, to wit: it purports to be a judgment of reversal of a decision of the board of appraisers, and does not in terms prescribe the rate or amount of duty to be levied and collected upon the merchandise involved.

67 Wherefore, the said respondent prays that the said judgment and decision of the said circuit court be reversed by said circuit court of appeals of the ninth circuit, and that said circuit court be directed to enter a judgment and decision in accordance with law upon the facts as they appear in said findings.

CHAS. A. GARTER,
Attorney for Respondent.

(Endorsed:) Petition on appeal and assignment of errors. Due service of within petition for appeal and assignment of errors admitted this 4th day of Dec., 1895. H. S. Foote, U. S. att'y, and attorney for appellee. Filed December 4, 1895. W. J. Costigan, clerk, by W. B. Beaizley, deputy clerk.

THE UNITED STATES OF AMERICA:

In the Circuit Court of the United States of America, Ninth Circuit, in and for the Northern District of California.

In the Matter of THE SECRETARY OF THE TREASURY, Petitioner and Appellee,
vs.
THE ANGLO-CALIFORNIAN BANK (LIMITED), Respondent and Appellant.

Order Allowing Appeal.

The Anglo-Californian Bank, Limited, the above-named respondent, having on this day presented its petition for appeal from

68 the judgment and decision of this court heretofore, to wit, on the 7th day of November, A. D. 1895, made and given and rendered in the above-entitled matter, and having at the same time filed its assignment of errors, and it satisfactorily appearing to me that the question involved is of such importance as to require a review of such judgment and decision, by the circuit court of appeals, of the United States, of the ninth circuit.

It is hereby ordered that such appeal be, and the same is hereby allowed, as prayed for;

That said respondent give bonds in the sum of $500, with two sufficient sureties, conditioned to answer all damages, to make its plea good and prosecute the appeal to effect, and conditioned in all respects according to law.

That thereafter upon the filing and approval of said bond, a transcript of records, proceedings and papers upon which the judgment and decision herein was rendered duly authenticated, be sent to the United States circuit court of appeals for the ninth circuit.

JOSEPH McKENNA,
Circuit Judge.

(Endorsed:) Due service of within order granting appeal admitted this 4th day of Dec., 1895. H. S. Foote, U. S. att'y, and attorney for appellee. Filed December 4, 1895. W. J. Costigan, clerk, by W. B. Beaizley, deputy clerk.

69 THE UNITED STATES OF AMERICA:

In the Circuit Court of the United States of America, Ninth Circuit in and for the Northern District of California.

In the Matter of THE SECRETARY OF THE TREASURY, Petitioner and Appellee,
vs.
THE ANGLO-CALIFORNIAN BANK (LIMITED), Respondent and Appellant. } No. 12070.

Bond on Appeal.

Know all men by these presents, that we, the Anglo-Californian Bank, Limited, as principal, and Ignatz Steinhart and Elbridge Durbrow, as sureties are held and firmly bound unto the Secretary of the Treasury of the United States, in the full and just sum of five hundred dollars, to be paid to the said Secretary of the Treasury of the United States, his successors in office and assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this 4th day of December, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas, lately at a session of the circuit court of the United States, in and for the ninth circuit, northern district of California, in a suit and matter depending in said court, between the Anglo-Californian Bank, Limited, and the Secretary of the Treas-
70 ury of the United States, a judgment and decision was rendered against the said The Anglo-Californian Bank, Limited, and the said The Anglo-Californian Bank, Limited, having obtained an appeal to the United States circuit court of appeals of the ninth circuit, and filed a copy thereof in the clerk's office of said court, to reverse the judgment and decision in the aforesaid matter, and a citation having been issued directed to the said Secretary of the Treasury, citing and admonishing him, to be, and appear at a session of the said circuit court of appeals, for the ninth circuit, to be holden at the city and county of San Francisco, in said circuit, on the 3rd day of January next.

Now the condition of the above obligation is such, that if the said The Anglo-Californian Bank, Limited, shall prosecute said appeal to effect and answer all damages and costs, if it fail to make the said

plea good, then the above obligation to be void, else to remain in full force and virtue.

THE ANGLO-CALIFORNIAN BANK, L'D,
By P. N. LILIENTHAL, *Manager.*
IGNATZ STEINHART.
ELBRIDGE DURBROW.

Signed and sealed in the presence of—
JESSE W. LILIENTHAL.

Approved by—
JOSEPH McKENNA,
Circuit Judge.

71 STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

Ignatz Steinhart and Elbridge Durbrow, each being duly sworn, deposes and says, that he is a householder, residing in said city and county of San Francisco, State aforesaid, and is worth the sum of five hundred dollars, exclusive of property exempt from execution, and over and above all his just debts and liabilities.

Subscribed and sworn to before me this 4th day of December, 1895.

IGNATZ STEINHART.
ELBRIDGE DURBROW.

[SEAL.] ALFRED A. ENQUIST,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed:) Filed December 4, 1895. W. J. Costigan, clerk, by W. B. Beaizley, deputy clerk.

72 In the Circuit Court of the United States of the Ninth Judicial Circuit, Northern District of California.

THE SECRETARY OF THE TREASURY, Petitioner and Appellee,
vs.
THE ANGLO-CALIFORNIAN BANK (LIMITED), Respondent and Appellant. } No. 12070.

Clerk's Certificate to Transcript.

In the matter of the petition of the Secretary of the Treasury for review of a decision of the board of United States general appraisers relative to certain twenty steel rails.

I, W. J. Costigan, clerk of the circuit court of the United States of America, of the ninth judicial circuit, in and for the northern district of California, do hereby certify the foregoing seventy (70) pages, numbered from 1 to 70 inclusive, to be a full, true and cor-

rect copy of the record and proceedings in the above and therein entitled matter, and that the same together constitute the transcript of the record herein, upon appeal to the United States circuit court of appeals, for the ninth circuit.

I further certify that the cost of the foregoing transcript of record is $42.70, and that the said amount was paid by the Anglo-Californian Bank, Limited, appellant.

73 In testimony whereof, I have hereunto set my hand and affixed the seal of said circuit court this 2d day of January, A. D. 1896.

[SEAL.]

W. J. COSTIGAN,
Clerk United States Circuit Court,
Northern District of California.

THE UNITED STATES OF AMERICA:

In the Circuit Court of the United States of America, Ninth Circuit, in and for the Northern District of California.

In the Matter of THE SECRETARY OF THE TREASURY, Petitioner and Appellee, *vs.* THE ANGLO-CALIFORNIAN BANK, LIMITED, Respondent and Appellant. } Citation. No. 12070.

Citation.

To John G. Carlisle, Secretary of the Treasury, Greeting:

Whereas, The Anglo-Californian Bank, Limited, respondent and appellant above named, has lately appealed to the circuit court of appeals of the United States, ninth circuit, from the judgment and decision lately rendered in the circuit court of the United States for the northern district of *the United States*, made in favor of you, Secretary of Treasury, and has filed the security required by law, you are therefore hereby cited and admonished to be and appear before the said circuit court of appeals at the city and county

74 of San Francisco, State of California, on the 3d day of January, A. D. 1896, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city and county of San Francisco in the said ninth circuit this 4th day of December in the year of our Lord one thousand eight hundred and ninety-five.

JOSEPH McKENNA,
Judge of the Circuit Court of the United States
in and for the Northern District of California.

(Endorsed:) No. 12070. Citation. Due service of within citation admitted this 4th day of December, 1895. H. S. Foote, U. S. att'y and attorney for appellee. Filed December 4, 1895. W. J. Costigan, clerk, by W. B. Beaizley, deputy clerk.

(Endorsed:) No. 273. United States circuit court of appeals for

the ninth circuit. The Anglo-Californian Bank, Limited, appellant, *vs.* The Secretary of the Treasury, petitioner, etc., appellee. In the matter of the petition of the Secretary of the Treasury for review of a decision of the board of United States general appraisers relating to certain twenty steel rails. Transcript of appeal. From the circuit court of the United States of America, for the ninth judicial circuit, in and for the northern district of California. Filed January 2, 1896. F. D. Monckton, clerk.

75 At a stated term, to wit, the October term, A. D. 1895, of the United States circuit court of appeals for the ninth circuit, held at the court-room, in the city and county of San Francisco, on Friday, the fourteenth day of February, in the year of our Lord one thousand eight hundred and ninety-six.

Present: The Honorable William B. Gilbert, circuit judge; Honorable Erskine M. Ross, circuit judge; Honorable Thomas P. Hawley, district judge.

THE ANGLO-CALIFORNIAN BANK, LIMITED, Appellant,
vs.
THE SECRETARY OF THE TREASURY, Petitioner, etc., Appellee. } No. 273.

Ordered appeal argued by Charles A. Garter, Esq., counsel for the appellant, and Samuel Knight, Esq., assistant United States attorney, and submitted to the court for its consideration and decision, the appellant being allowed ten days to file a reply brief.

76 In the United States Circuit Court of Appeals for the Ninth Circuit.

THE ANGLO-CALIFORNIAN BANK, LIMITED, Appellant,
vs.
THE SECRETARY OF THE TREASURY, Petitioner, etc., Appellee. } No. 273.

In the matter of the petition and application of the Secretary of the Treasury for a review, under an act of Congress approved June 10, 1890, entitled "An act to simplify the laws in relation to the collection of revenues," of the questions of law and fact involved in a decision of the board of general appraisers on duty at the port of New York in the matter of the classification of certain (T) steel rails, merchandise imported by the Bank of California of San Francisco, California, into the port of San Francisco, the subsequent liquidation of duties whereon was protested by the Anglo-Californian Bank, Limited, at the same place.

Appeal from the circuit court of the United States for the northern district of California.

The board of general appraisers sustained the protest of the Anglo-Californian bank against the decision of the collector of customs at San Francisco. The circuit court reversed the decision of

the appraisers. The material facts upon which the matter in issue was tried are stated in the opinion of the appraisers and of the circuit court to be as follows: "The Bank of California, at various times between March 2 and June 24, 1887, imported into the port of San Francisco certain (T) steel rails, aggregating 5,678 tons. These rails remained in general order unclaimed until February 27, 1888, when warehouse entries thereof were made and bonds given by the Bank of California as importer and consignee. Said warehouse entries were liquidated, under the act of March 3, 1883, at $17 per ton, and at the expiration of one year from the date of the importation the additional duty of 10 per cent. prescribed by section 2970,
77 Revised Statutes, was charged upon the bonds against the merchandise. Between September 21, 1888, and December 6, 1889, four withdrawals for consumption were made and the amount of duties charged thereon was paid. When the bonded period of three years was about to expire the Oregon Pacific Railroad Company, for whose account the steel rails in question had been imported, represented to the Treasury Department that serious casualties had occurred to its roads by storms and floods, and requested a postponement of the sale of merchandise required under section 2971, Revised Statutes; whereupon the Secretary of the Treasury authorized a postponement of the sale for three months without giving due notice to or having the consent of the principal or sureties on the warehouse bonds. Similar postponements have been allowed for periods of six months up to the present date, the Bank of California uniting in two instances in the application for delay. A postponement of the sale of the merchandise allowed by the Secretary of the Treasury September 16, 1893, was conditioned upon the consent of the sureties on the bond. The final postponement was authorized by the Secretary of the Treasury March 25, 1895, pending decision regarding the legal status of the goods by the board of general appraisers. Under date of June 30, 1890, more than three years after the date of importation, the Secretary of the Treasury authorized the collector at San Francisco to permit withdrawals for consumption of the steel rails in question from time to time in such quantities as might be desired. On October 21, 1890, the Treasury Department decided that withdrawals might be made under the act of 1890 by the importers at the rates of duty, regular and additional, prescribed by the act of 1883. Notwithstanding this decision 3,306 tons of steel rails were withdrawn for consumption, and in addition to 10 per cent., as prescribed by section 2970, Revised Statutes,
78 duties were paid thereon and accepted by the collector at $13.44 per ton, the rate prescribed therefor in act of October 1, 1890. All charges and expenses, including storage charges, have been paid. The importers recently offered to withdraw for consumption the remainder of the merchandise in bonded warehouse at the rate prescribed in paragraph 117 of the act of August 1, 1894. Permission to make such withdrawals has not been granted by the Secretary of the Treasury, but in lieu thereof authority has been given the collector to permit withdrawal entry to be made by

the importers of a small portion of the merchandise at the rates prescribed in the act of March 3, 1883, in order that a test case for judicial decision might be made. In accordance with the authority thus granted, entry for consumption of twenty of the steel rails in question (weighing about 5 tons) was made by the importers, and duty was assessed thereon by the collector at $17 per ton and 10 per cent. additional under the act of March 3, 1883, the act in force at the time the merchandise was imported. Against this action the importers protested, claiming that the merchandise in question, having been withdrawn for consumption after August, 1894, was properly dutiable at seven-twentieths of 1 cent per pound, in accordance with the provisions of section 1 and paragraph 117 of the present act."

Upon these facts the questions presented involve a construction of certain sections of the Revised Statutes of the United States; of the act of June 10, 1890, to simplify the laws in relation to the collection of the revenue (26 Stat., 131, 142), known as the administrative act; of the act of October 1, 1890, to reduce the revenue and equalize duties on imports, and for other purposes (26 Stat., 567, 625), known as the McKinley act, and of the act of August 28, 1894, to reduce taxation, to provide revenue for the Government, and for other purposes (28 Stat., 509, 570), known as the Wilson act. The sections of the statutes read as follows:

79

Revised Statutes.

"SEC. 2970. Any merchandise deposited in bond in any public or private bonded warehouse may be withdrawn for consumption within one year from the date of original importation on payment of the duties and charges to which it may be subject by law at the time of such withdrawal; and after the expiration of one year from the date of original importation, and until the expiration of three years from such date, any merchandise in bond may be withdrawn for consumption on payment of the duties assessed on the original entry and charges, and an additional duty of ten per centum of the amount of such duties and charges."

"SEC. 2971. All merchandise which may be deposited in public store or bonded warehouse may be withdrawn by the owner for exportation to foreign countries; or may be transshipped to any port of the Pacific or western coast of the United States at any time before the expiration of three years from the date of original importation; such goods on arrival at a Pacific or western port to be subject to the same rules and regulations as if originally imported there. Any goods remaining in public store or bonded warehouse beyond three years shall be regarded as abandoned to the Government, and sold under such regulations as the Secretary of the Treasury may prescribe, and the proceeds paid into the Treasury. In computing this period of three years, if such exportation or transshipment of any merchandise shall, either for the whole or any part of the term of three years, have been prevented by reason of any order of the President, the time during which such exportation or

transshipment of such merchandise shall have been so prevented shall be excluded from the computation. Merchandise withdrawn for exportation shall be subject only to the payment of such storage and charges as may be due thereon."

"SEC. 2972. The Secretary of the Treasury, in case of any sale of any merchandise remaining in public store or bonded warehouse beyond three years, may pay to the owner, consignee, or agent of such merchandise, the proceeds thereof, after deducting duties, charges, and expenses in conformity with the provision relating to the sale of merchandise remaining in a warehouse for more than one year."

"SEC. 2973. If any merchandise shall remain in public store beyond one year, without payment of the duties and charges thereon, except as hereinbefore provided, then such merchandise shall be appraised by the appraisers, if there be any at such port * * * and sold by the collector at public auction, on due public notice thereof being first given, in the manner and for the time to be prescribed by a general regulation of the Treasury Department. At such public sale, distinct printed catalogues descriptive of such merchandise, with the appraised value affixed thereto, shall be distributed among the persons present at such sale. A reasonable opportunity shall be given before such sale, to persons desirous of purchasing, to inspect the quality of such merchandise. The proceeds of such sales, after deducting the usual rate of storage at the port in question, with all other charges and expenses, including duties, shall be paid over to the owner, importer, consignee, or agent and proper receipts taken for the same."

Administrative Act.

"SEC. 20. Any merchandise deposited in any public or private bonded warehouse may be withdrawn for consumption within three years from the date of the original importation, on payment of the duties and charges to which it may be subject by law at the time of such withdrawal: Provided, that nothing herein shall affect or impair existing provisions of law in regard to the disposal of perishable or explosive articles."

Section 29, after enumerating several sections of the Revised Statutes (sections 2970, 2971, 2972, and 2973 not being mentioned) and repealing them in direct terms, reads as follows: "And all other acts and parts of acts inconsistent with the provisions of this act, are hereby repealed, but the repeal of existing laws or modifications thereof embraced in this act shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal or modification; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made." * * *

McKinley Act.

The enacting clause reads as follows: "That on and after the sixth day of October, eighteen hundred and ninety, unless otherwise specially provided for in this act, there shall be levied, collected and paid upon all articles imported from foreign countries, and mentioned in the schedules herein contained, the rates of duty which are, by the schedules and paragraphs, respectively prescribed, namely:

"Schedule C, paragraph 141. Railway bars, made of iron or steel, and railway bars made in part of steel, T rails, and punched iron or steel flat rails, six-tenths of one cent per pound."

Sections 50, 54, and 55 of this act read as follows:

"SEC. 50. That on and after the day when this act shall go into effect all goods, wares, and merchandise previously imported, for which no entry has been made, and all goods, wares, and merchandise previously entered without payment of duty and under bond
82 for warehousing, transportation, or any other purpose, for which no permit of delivery to the importer or his agent has been issued, shall be subjected to no other duty upon the entry or the withdrawal thereof than if the same were imported respectively after that day: Provided, that any imported merchandise deposited in bond in any public or private bonded warehouse having been so deposited prior to the first day of October, eighteen hundred and ninety, may be withdrawn for consumption at any time prior to February first, eighteen hundred and ninety-one, upon the payment of duties at the rates in force prior to the passage of this act: Provided further, that when duties are based upon the weight of merchandise deposited in any public or private bonded warehouse said duties shall be levied and collected upon the weight of such merchandise at the time of its withdrawal."

"SEC. 54. That section twenty of the act entitled 'An act to simplify the laws in relation to the collection of revenues;' approved June 10th, eighteen hundred and ninety, is hereby amended to read as follows: 'Sec. 20. That any merchandise deposited in bond in any public or private bonded warehouse may be withdrawn for consumption within three years from the date of original importation, on payment of the duties and charges to which it may be subject by law at the time of such withdrawal: Provided, that nothing herein shall affect or impair existing provisions of law in regard to the disposal of perishable or explosive articles.'"

"SEC. 55. That all laws and parts of laws inconsistent with this act are hereby repealed: Provided, however, that the repeal of existing laws, or modifications thereof, embraced in this act shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the
83 said repeal or modifications, but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modification had not been made."

Wilson Act.

The enacting clause is, "That on and after the first day of August, eighteen hundred and ninety-four, unless otherwise specially provided for in this act, there shall be levied, collected and paid upon all articles imported from foreign countries or withdrawn for consumption, and mentioned in the schedules herein contained, the rates of duty which are by the schedules and paragraphs respectively prescribed, namely:

"Schedule C, paragraph 117.—Railway bars, made of iron or steel, and railway bars made in part of steel, T rails, and punched iron or steel flat rails seven-twentieths of one cent per pound." (Which computed upon the basis of 2,240 pounds to the ton would be $7.84 per ton.)

SEC. 72. "All acts and parts of acts inconsistent with the provisions of this act are hereby repealed, but the repeal of existing laws or modifications thereof embraced in this act shall not affect any act done, or any right accruing or accrued or any suit or proceeding had or commenced in any civil cause before the said repeal or modifications; but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made." * * *

Section 10 of the act of March 3, 1883 (22 Stat., 525), to which reference will be made, reads as follows:

"That all imported goods, wares, and merchandise which may be in the public stores or bonded warehouses on the day and year when this act shall go into effect, except as otherwise provided in
84 this act, shall be subjected to no other duty upon the entry thereof for consumption than if the same were imported respectively after that day; and all goods, wares, and merchandise remaining in bonded warehouses on the day and year this act shall take effect, and upon which the duties shall have been paid, shall be entitled to a refund of the difference between the amount of duties paid and the amount of duties said goods, wares, and merchandise would be subject to if the same were imported respectively after that date."

Chas. A. Garter, Jesse W. Lilienthal, and J. F. Evans, for appellant; H. S. Foote, U. S. attorney, and Samuel Knight, assistant U. S. attorney, for appellee.

Before Gilbert and Ross, circuit judges, and Hawley, district judge.

HAWLEY, *District Judge:*

The contention of appellant, upon the foregoing state of facts and the various provisions of the statutes relating thereto, is to the effect that when the McKinley act went into operation the specific rate of duty upon steel rails was changed from $17 per ton to $13.44; that this rate was again changed by the Wilson act to $7.84; that section 2970 of the Revised Statutes has been repealed and is, therefore, inapplicable to the merchandise in controversy in this proceeding;

that the words "shall be regarded as abandoned to the Government," used in section 2971, were repealed by the later sections of the Revised Statutes, and have been so treated by the regulations and practice of the Treasury Department.

The contention of the appellee is that at the expiration of three years from the date of the original importation the merchandise in question became abandoned to the United States and was
85 subject to sale as such to satisfy the duties and charges thereon then in force, to wit, the duty of $17 a ton under paragragh 147 of the tariff act of March 3, 1883, and ten per cent. additional thereon, with warehouse charges, under section 2970 of the Revised Statutes; that this right to sell the merchandise and to deduct from the proceeds thereof the duties and charges as above mentioned was a right accrued at such time to the United States and a liability incurred by said merchandise and the importer thereof, within the meaning of section 29 of the administrative act of June 10, 1890; section 55 of the McKinley act of October 1, 1890, and section 72 of the Wilson act of August 28, 1894; that section 2971 of the Revised Statutes was not repealed nor in any manner modified by the administrative act, nor by the McKinley act, nor by the Wilson act, but ever has been since its enactment in full force and effect, save as modified by section 2972, and that it therefore necessarily follows that the duties and charges properly assessed against the steel rails and collected from the proceeds of the sale thereof or from the importer thereof by the collector of customs are those in force at the time of their abandonment.

Which contention is correct?

The questions involved in this case have been argued with marked ability upon both sides. The authorities bearing upon the questions have been collected and discussed at length. The various acts of Congress have been thoroughly reviewed and our attention has been called to the entire system of tariff legislation.

The contention of appellant is sustained by the decision of the Court of Claims in Abbott *v.* United States, 20 Court of Claims, 280. The contention of appellee is sustained by the views expressed
86 by Attorney General Brewster (17 Att'y Gen. Op., 650), and Attorney General Olney, January 17, 1895. Owing to these conflicting opinions the contest in the present case is presented with the evident purpose of having the questions authoritatively settled.

In the outset it will be conceded that revenue statutes are enacted under the general power of the Government to impose a tax; that in order to sustain the tax in any given case it must affirmatively appear that the power to impose it comes within the letter and spirit of the law authorizing it; that if there are any doubts upon the question the construction should be in favor of the importer. Mr. Justice Story, in Adams *v.* Bancroft, 3 Sum., 384; 1 Fed. Cases, No. 44, p. 84, said "that laws imposing duties are never construed beyond the natural import of the language, and duties are never imposed upon the citizens upon doubtful interpretations, for every duty imposes a burden on the public at large, and is construed strictly, and must be made out in a clear and determinate manner

from the language of the statute." The same rule has been expressed by the Supreme Court. Hartranft *v.* Wiegmann, 121 U. S., 609, 616, and authorities there cited. The same learned justice in the earlier case of United States *v.* Breed, 1 Sum., 159: 24 Fed. Cases, p. 1222, laid down the rule as to the proper construction to be given to such acts as follows: "Revenue and duty acts are not in the sense of the law penal acts, and are not, therefore, to be construed strictly; nor are they, on the other hand, acts in furtherance of private rights and liberty, or remedial, and therefore to be construed with extraordinary liberality. They are to be construed according to the true import and meaning of their terms, and when the legislative intention is ascertained, that, and that only, is to be our guide in interpreting them."

Such laws are more remedial than penal in their nature.
87 They are intended to prevent fraud, to suppress public wrong, and to promote the public good, and should always be so construed as to effectually carry out the purposes and objects which they were intended to accomplish. Taylor *v.* United States, 3 How., 197; Cliquot's Champagne, 3 Wall., 115; United States *v.* Hodson, 10 Wall, 395; Smythe *v.* Fiske, 23 Wall., 374, 380.

The steel rails in question were imported in 1887 and entered for warehousing February 27, 1888, and the duties liquidated under the act of 1883. At that time the rights and liabilities of the importers were clear and plain. They had the right to withdraw the rails within one year by paying the duties then existing, viz., $17 per ton, or they might, after the expiration of one year and within three years, withdraw the rails upon paying the duty of $17 per ton and 10 per cent. additional duty. (Rev. Stat., 2970.)

Upon this point there can be no controversy; but the rails in question were not withdrawn until after the expiration of the three years, and hence, under the terms of section 2971, were to be "regarded as abandoned to the Government;" but this right of the Government was not enforced because the Oregon Pacific railroad, for whose account the rails were imported, requested a postponement of the sale for three months on account of serious casualties that had occurred to its railroad. Other postponements were for like reasons made for periods of six months, and in the meantime the tariff acts, designated as the McKinley act and the Wilson act, were passed.

Admitting at the threshold of the discussion that the word "abandonment," when first used in the act of August 5, 1861 (12 Stat., p. 294, sec. 5), and repeated in the act of July 14, 1862 (12 Stat., p. 560, sec. 21), during the existence of war, was then used in the broad sense of divesting the importer or
88 owner of any title or interest in the goods, it does not necessarily follow that the same interpretation is to be given to it in the provisions of section 2971. The fact is that by the act of July 28, 1886 (14 Stat., p. 330, sec. 10), the provisions of the act of August 6, 1846, were re-enacted, so that thereafter the law provided that after the sale of the merchandise the excess, after deducting storage, expenses, and duties, etc., should be paid to the owner. The

various provisions of the existing laws were thereafter incorporated into the provisions of the Revised Statutes. It therefore follows that the word abandonment, as used in section 2971 in connection with the provisions contained in section 2972, is not to be construed as an absolute abandonment of the goods so as to vest the title thereof in the Government; but the word is used in the sense of vesting absolute authority and power in the Government when the goods have remained in the warehouse for a period of more than three years to sell and dispose of the same for the purpose of collecting the duties, charges, and expenses thereon. This, as we shall have occasion hereafter to state, might be accomplished by a regulation of the department allowing the goods to be withdrawn by the owner upon payment of such duties, etc.

Without repeating the respective arguments of counsel in their review of the tariff legislation, the policy of the Government in the collection of revenue duties on imported goods, and the rights of the importers to withdraw from bonded warehouses imported merchandise therein stored, we are of opinion that, after an extended examination thereof, it may safely be said that throughout the entire legislation of this country upon the subject the intent of Congress to limit the right of the importer to withdraw his goods within a certain time and to impose
89 condition for his failure so to do is made manifest. If there were no provisions in the statute for the sale of the goods by the Government, it will readily be seen, as was said by Brown, J., in United States *v.* Visser, 10 Fed., 642, 649, that "the time for the payment of duties on all warehouse goods would be practically considerably enlarged, since payment of duties could always be safely deferred until the Government was ready to effect a sale. To avoid this practical extension of the period for payment of duties and to secure prompt payment within the time intended to be limited by the warehouse acts, some provision of this kind was necessary. Moreover, the handling of the vast amount of warehoused goods, the orderly collection of the duties upon them through the proper subordinate officers, and the necessity of a transfer of the goods to different hands for the purpose of a Government sale—in other words, the conveniences of the public business—also required that a period be fixed when the importer's right to pay the duties and to control the goods should cease and when the Government might proceed to sell without inconvenience and without question. The various acts passed since the adoption of the warehouse system show, I think, that the purpose of the statute in question was not only for convenience in the transaction of the public business, but especially, also, to secure the prompt payment of duties within the prescribed period."

The argument of appellant that the action of the Secretary of the Treasury in authorizing the various postponements of the sale of the rails had the effect to nullify the provisions of section 2971 with reference to the abandonment of merchandise remaining in the bonded warehouse beyond the period of three years ought not to be sustained. It is true that under the revenue laws the Secretary of

the Treasury, in the collection of the revenues, is invested
90 with much discretion in the exercise of his administrative functions. He has the power to prescribe rules and regulations as to the modes of collection, etc., but he cannot, in the exercise of this power, alter or amend the provisions of the revenue laws. "All he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted." Morrill *v.* Jones, 106 U. S., 467; Campbell *v.* United States, 107 U. S., 407, 410.

The regulations as made by the Secretary of the Treasury cannot, of course, control the courts in the construction of the revenue laws when their meaning is plain, yet if there has been a long acquiescence in such regulations and the rights of parties have been adjusted in accordance therewith the courts ought not to take a different view "without the most cogent and persuasive reasons." Brown *v.* United States, 113 U. S., 571; United States *v.* Hill, 120 U. S., 170, 182; Robertson *v.* Downing, 127 U. S., 607, 613.

The action of the Secretary of the Treasury in postponing the sale of the merchandise after the expiration of three years did not have the effect of giving the importers any new privilege or right or release them from any liability which existed by law.

The regulation of the Treasury Department of February 27, 1884, that "within the three years during which goods remaining in bonded warehouse may be withdrawn collectors of customs will notify the parties concerned of the date on which the period limited by law will expire; after such date and at any time before the goods are listed for sale the collector may allow a withdrawal entry for consumption, to be made on payment of all charges and expenses, and the duties, regular and additional, which may have accrued," is consistent with the provisions of sections 2191 and 2192 and does
not in any manner change or affect the rate of duty and the
91 charges and expenses to which the merchandise had become liable. It is in effect the same as if a sale of the goods had been provided for. Attorney General Brewster, in reply to the third question of the Secretary of the Treasury, as to "whether, under section 2971, Revised Statutes, goods are to be sold at the expiration of three years from the date of importation, notwithstanding the fact that duties may have been already paid thereon," said: "While I am of opinion that your third question should be answered in the affirmative, and so answer it, I deem it proper to add that I perceive no legal objection to the existing practice of your department respecting the disposition of goods which have remained in bonded warehouse beyond three years. The objects and requirements of the provisions of section 2971, last above adverted to, are in my judgment sufficiently met by that practice, whereby, in lieu of a former sale of goods, the owner, consignee, or agent is permitted to pay the duties, charges, etc., that have accrued thereon and take them away. In case of a sale the owner, consignee, or agent of the merchandise would (under section 2972) become entitled to receive the proceeds after deducting therefrom the duties, charges, and expenses. The practice referred to accomplishes the same end and is

indeed a virtual sale of the goods under the power given the Secretary of the Treasury by the statute."

The act of the Secretary of the Treasury in allowing the withdrawal of the rails in this case is not inconsistent with the provisions of section 2971 with reference to the abandonment of the merchandise. The Secretary, in his letter to the collector of customs allowing the withdrawal, expressly stated that a reference to the decision of the department for a long series of years shows that it has uniformly held that the duties found due on the warehouse bond at the date of its expiration became a debt collectable
92 from the proceeds of a sale of the goods or from the sureties on the bond, and that subsequent changes of tariff can neither increase nor decrease the amount of such debt. The letter further stated that the department was not disposed to inflict unnecessary hardship upon the importers by a summary closure of the matter, and, while denying the right of the importers to withdraw the goods unless the duty assessed under the act of March 3, 1883, was paid, permitted them to withdraw a small portion at that rate, and the object of this is stated as follows: "It may be that duties will be so paid under protest in order that the exaction of duty may be reviewed by the board of general appraisers. Should this prove to be the case, you are further authorized to delay the sale of the remaining property until a decision has been reached."

Surely the importers cannot claim that they were released from any existing liability by reason of this extended favor. The withdrawal of a small portion of the goods was allowed in order to test, not to create, the liability of the importers and the rights of the Government in the premises.

The case of Abbott & Co. *v.* United States, 20 Court of Claims, 280, decided April 27, 1885, is cited in support of, and is conceded to be an authority in favor of, the position contended for by appellant. In that case the claimants were, on July 1, 1883, the owners of 66,575 pounds of wool lying in the United States bonded warehouse at Boston. The wool was imported from England March 8, 1880, and placed in the warehouse, where it remained until August 31, 1883. It was then removed by the claimants. The duties were paid March 7, 1881. The claimants made a demand upon the collector of the port for $665.75, a sum equal to a difference between the duties that had been levied and paid and the duty to which the wool was subject under the tariff act of March 3, 1883, and the
93 court held that the claimants were entitled to the refund. The court, after quoting section 10 of the act of 1883, said: "The language of this section, so far as it relates to goods upon which the duties had been paid, is very general. Taken by itself, it fully sustains the claimants' demand, for their goods were in bonded warehouse when the act went into effect and the duties had been paid. The defendants, however, contend that the claimants can derive no benefit from this section, because their goods, having been in the bonded warehouse for more than three years, were abandoned to the Government under section 2971, Revised Statutes. This section provides that 'any goods remaining in public store or bonded

warehouse beyond three years shall be regarded as abandoned to the Government and sold under such regulations as the Secretary of the Treasury may prescribe.' Standing by itself, this section might support the defendants' position. It implies that the title of the original owners, by lapse of time and operation of law, has become divested and the Government has succeeded to the ownership. The original act, July 14, 1862 (12 Stat. L., p. 560), from which this section is taken, was based upon that theory, and so it provided that the proceeds of sale should be paid into the Treasury. The character of this provision and purpose of the Government have been entirely changed by the act, July 28, 1866 (14 Stat. L., p. 330), now section 2972, which provides that 'the Secretary of the Treasury may pay to the owner, consignee, or agent of such merchandise the proceeds thereof after deducting duties, charges, and expenses.' Since this enactment the goods are no longer to be regarded as abandoned by the owner to the Government. The ownership continues without change, but after the sale attaches to the net proceeds instead of the goods. The two sections construed together provide a mode
for the collection of duties and charges and the clearance
94 of the warehouses. When the goods have remained in bond more than three years the Government acquires a right to sell them for the purpose named, but cannot pocket the proceeds. Hence the practice has arisen in the Treasury Department to allow the owner, at any time before the goods are advertised for sale, to remove the same upon the payment of duties and charges." After quoting with approval the views of Attorney General Brewster as to the practice of the department allowing the owner to withdraw the goods upon the payment of duties — further said: "Apparently Congress intended that all goods remaining in the bonded warehouse July 1, 1883, and which, according to the construction and practice of the department under sections 2971 and 2972, might be withdrawn by the consignee upon payment of duties and charges, should go upon the market with no heavier burdens than were to be imposed, under the new tariff, upon later importations." In so far as this opinion declares that the provisions of section 2971 *has* been changed by section 2972 so as to allow the importer to remove the goods after they have been in the bonded warehouse beyond the period of three years, "upon the payment of duties and charges," it is not opposed to the views we have expressed. The claimants in the present case were allowed to withdraw the goods in question upon payment of the duties and charges demanded by the collector. The question is, What amount of duty were the goods subject to?

The court in the Abbott case seemed to be of opinion that because of the provisions in section 2972 and the practice of the department in allowing the goods to be withdrawn it was the intention of Congress that the goods "should go upon the market with no heavier burdens than were to be imposed under the new tariff upon later
importations." In this respect we decline to accept the con-
95 clusions reached by the Court of Claims. The opinion is entitled to and has received respectful consideration, but it is

not of controlling authority and ought not to be followed unless its reasoning and conclusion are deemed to be correct.

The case of *In re* Schmid, 54 Fed., 145, cited and relied upon by appellant, is different in its facts from the case at bar in this, that the goods in question in that case had not been in bond for a period of three years, and hence did not come within the provisions of section 2971.

Is section 2971 repealed by the subsequent tariff acts?

We have already quoted at length in the statement of facts the various sections and provisions of the laws which are relied upon by appellant to sustain his contention. They need not be again repeated in full. Section 29 of the administrative act repealed in direct terms several sections of the Revised Statutes, but among them section 2971 is not mentioned. It was not in direct terms repealed. The same section of the act also repealed "all other acts and parts of acts inconsistent" with its provisions, with a saving clause that such repeal or modification of the existing laws "shall not affect any act done or any right accruing or accrued, * * * but all rights and liabilities under said laws shall continue and may be enforced in the same manner as if said repeal or modifications had not been made."

Section 55 of the McKinley act of October 1, 1890, and section 72 of the Wilson act of August 28, 1894, contain the same provisions.

Conceding that section 2970 has been repealed, the question still remains, Is section 2971 inconsistent with or repugnant to any of the provisions contained in the acts above mentioned?

It must be conceded that in order to constitute a repeal of the law upon such grounds there must be a positive repugnancy
96 between the old laws and the new one. This principle is elementary. In no line of cases has this rule been adhered to with greater strictness than in the interpretation of laws enacted for the collection of the revenues.

In Wood *v.* United States, 16 Pet., 342, 362, the question was presented to the court whether the 66th section of the act of 1799 had been repealed or whether it remained in full force. That section of the act, like the one under consideration here, had not been expressly or by direct terms repealed, and the court said: "The question then arises whether the 66th section of the act of 1799, c. 128, has been repealed or whether it remains in full force. That it has not been expressly or by direct terms repealed is admitted, and the question resolves itself into the more narrow inquiry whether it has been repealed by necessary implication. We say by necessary implication, for it is not sufficient to establish that subsequent laws cover some or even all of the cases provided for by it, for they may be merely affirmative or cumulative or auxiliary; but there must be a positive repugnancy between the provisions of the new law and those of the old, and even then the old law is repealed by implication only *pro tanto* to the extent of the repugnancy; and it may be added that in the interpretation of all laws for the collection of revenue, whose provisions are often very complicated and numer-

ous to guard against frauds by importers, it would be a strong ground to assert that the main provisions of any such laws sedulously introduced to meet the case of a palpable fraud should be deemed repealed merely because in subsequent laws other powers and authorities are given to the custom-house officers and other modes of proceeding are allowed to be had by them before the goods have passed from their custody in order to ascertain whether there has been any fraud attempted upon the Government. The
97 more natural, if not the necessary, inference in all such cases is that the legislature intend the new laws to be auxiliary to and in aid of the purposes of the old law, even when some of the cases provided for may equally be within the reach of each. There certainly, under such circumstances, ought to be a manifest and total repugnancy in the provisions to lead to the conclusion that the latter laws abrogated and were designed to abrogate the former." See also Aldridge *v.* Williams, 3 How., 1, 25; The Distilled Spirits, 11 Wall., 356, 365; Fabri *v.* Murphy, 95 U. S., 191, 196.

In Fabri *v.* Murphy the question was whether the merchandise was subject to the additional duty of ten per cent. imposed by the act of March 14, 1866 (14 Stat., 8). The goods were imported in November, 1869, and were stored in the bonded warehouse until March 20, 1871, when they were withdrawn for consumption. The court held that the goods were subject to the additional duty of ten per cent. imposed by the act of 1866. In discussing certain acts relating to the revenue the court said: "Acts of Congress of the kind are often very complex in their provisions in order to enable those charged with their execution to protect the Treasury against the constant attempts of importers to evade the payment of new duties or increased taxation. New regulations often become necessary to enable the officers of the custom to defeat such designs, and the rule is that in such cases there ought to be a manifest and irreconcilable repugnancy to warrant the conclusion that the old law is abrogated or that the new law was intended to supersede the antecedent provision."

In the light of these cardinal rules of construction and of the history, policy, and intention of the revenue laws, as hereinbefore discussed, we are of opinion that the provisions of section 2971
98 are not inconsistent with the various sections of the subsequent tariff acts hereinbefore referred to.

Attorney General Brewster, February 7, 1884, in reply to the question of the Secretary whether section 10 of the act of 1883 is necessarily limited to goods which had not been in bonded warehouses more than three years at the date said act went into operation, among other things, said: "That the first clause of this section, which deals with imports whereon the duties have not been paid, applies only to such merchandise remaining in the public stores or bonded warehouses on the day the act takes effect as may then lawfully be entered for consumption is indicated by the words 'upon entry thereof for consumption' used therein. These words plainly show that the benefits of the provision were meant for merchandise

in bond, which, at the time mentioned, the importer is entitled thus to enter, and for none other. * * * Thus, by the then and still existing law, goods in bond can be entered for consumption and withdrawn at any time during the period of three years from the date of original importation. Upon the expiration of this period, however, the privilege so to enter such goods ceases, and (by section 2971, Revised Statutes) they are to be 'regarded as abandoned to the Government and sold under such regulations as the Secretary of the Treasury may prescribe,' etc. It follows that merchandise whereon the duties have not paid, which had been in the public stores or bonded warehouses more than three years on the day the act of 1883 took effect, does not come within the operation of section 10 of that act. * * * Under section 2977, Revised Statutes, merchandise upon which duties have been paid may thereafter remain in bonded warehouse in custody of the customs officers at the expense and risk of the owners; but the period during which it may thus remain subject to withdrawal by him is limited, for unless withdrawn for consumption or exportation within three years
99 from the date of original importation it becomes liable to be sold as abandoned to the Government (sec. 2971, Rev. Stat.). * * * I am thus led to the conclusion that the whole of the section is inapplicable to merchandise which on the day the act of 1883 took effect had remained in bonded warehouse more than three years from the date of original importation, and were then, in contemplation of law, abandoned to the Government. In direct answer to your first question I accordingly reply that, in my opinion, section 10 of the tariff act of March 3, 1883, extends only to goods which had not been in bonded warehouse more than three years at the date that act went into operation. * * * The provision in section 2971 * * * has, I think, a double purpose. First, to enforce the collection of duties, charges, etc., upon the goods, and, second, to relieve their customs service from the care and custody thereof. * * * Yet, as already observed, the privilege thereby conferred of letting the goods remain in warehouse in custody of the custom officers after payment of the duties thereon is subject to the limitation of three years from the date of original importation under the operation of the above-mentioned provision in section 2971. At the end of that period they are to be regarded as abandoned to the Government and sold."

If section 2971 is consistent with the provisions of section 10 of the act of 1883, how can it consistently be said that it is repugnant to the section of the McKinley or Wilson acts which we have cited. The preamble in the tariff acts must be read in the light of what is contained in other parts of the laws, especially of the provisions of section 29 of the administrative act, section 55 of the McKinley act, and section 72 of the Wilson act, to the effect that the repeal of existing laws or modifications shall not affect any act done "or any right accruing or accrued," etc. The merchan-
100 dise in question, having remained in the bonded warehouse for a period of more than three years on the 24th of June, 1890, became, under the laws then existing and in full force,

subject to the duty provided in the tariff act of March 3, 1883, and ten per cent. additional thereon, with warehouse charges as prescribed by law. This was a right that had accrued to the Government prior to the passage of the McKinley or Wilson tariff acts. In United States *v.* Burr, 159 U. S., 78, the court held that goods arriving at the port of New York August 7, 1894, entered at the custom-house, and duties paid August 8, 1894, and the entry liquidated as entered at the custom-house August 28, 1894, on which day the tariff act of August, 1894, became a law, were subject to duty under the act of October 1, 1890, and not to duty under the act of August 28, 1894. The court, in the course of its opinion, after quoting in full section 72 of the Wilson act and the provisions of section 54 of the McKinley act, said: "This merchandise was entered for consumption and delivered after August 1 and before August 28, 1894, when the act in question became a law. It was subject then to the rates of duty imposed by the law in force at that time, namely, the act of October 1, 1890, and the duties were properly assessed by the collector under that law, unless some provision to the contrary is to be found in the act of August 28, 1894." After quoting the preamble in the first section of the act of 1894, the court continues: "The contention is that, the language of that section being free from all obscurity and ambiguity, there is no room for construction, and that the court is imperatively required to conclude that it was the intention of Congress that the act should have a retrospective operation as of August 1, 1894, although it did not become a law until after that date. It is conceded that the general rule is, as stated in United States *v.* Heth, 3 Cranch, 398, 413, that 'words in a statute
101 ought not to have a retrospective application unless they are so clear, strong, and imperative that no other meaning can be annexed to them or unless the intention of the legislature cannot be otherwise satisfied,' and that the usual course in tariff legislation has been, inasmuch as some time is necessary to enable importers and business men to act understandingly, to fix a future date at which the statutes are to become operative. The question is not one of construction, but of intention as to the operative effect of this act because of the existence of the particular date in section 1. In view of the general rule and the admitted policy in respect of such laws, is there anything on the face of the act which raises such a doubt in the matter as justifies the court in considering whether the language used in that particular section must be literally applied in the case before it? And upon the threshold we are met with the fact that the act of October 1, 1890, was not repealed in terms until August 28, 1894, and that the repealing section of the latter act kept in force every right and liability of the Government or of any person which had been incurred or accrued prior to the passage thereof, and thereby every such right or liability was excepted out of the effect sought to be given to the first section. The right of the Government to duties under the tariff law which existed between August 1 and August 28 was a right accruing prior to the passage of the act of 1894 (that is, the date when the bill became a law), and the obliga-

tion of the importers between August 1 and August 28 to pay the duties on their entries under existing tariff law was a liability under that law arising prior to the passage of the act of 1894, and if Congress intended that section 1 should relate back to August 1, still the intention is quite as apparent that the act of October, 1890, should remain in full force and effect until the passage of the new act on August 28, and that
102 all acts done, rights accrued, and liabilities incurred under the earlier act prior to the repeal should be saved from the effect thereof, as to all parties interested, the United States included. The duties under consideration were paid August 8, and the merchandise delivered on August 11, but it was not until August 28 that the fact was stamped on the entry that the goods were liquidated as entered. There was no change in the classification and no additional duty was demanded or collected, and the payment made at the time of entering the merchandise for consumption was the payment of duties. Barney *v.* Rickard, 157 U. S., 352. The original assessment of duty was right, and the final liquidation was the same, and there was no specific provision in the act of 1894 requiring a liquidation at the rates under that act. How, then, can it be held that the act of October 1, 1890, was intended to be repealed by retroaction? Moreover, in arriving at the true intention of Congress we cannot treat section 1 as if it constituted the entire act, but must deduce the intention from a view of the whole statute and from the material parts of it. * * * Again, a higher rate of duty was imposed on many articles by the act of 1894 than under the prior act, and a lower rate of duty on others, while some that were free were made dutiable, as, for instance, the article of sugar. Must duties paid between August 1 and August 28 be refunded where the rate was lowered and assessed where the rate was raised or a duty imposed where none existed? Clearly not. These considerations lead to the conclusion that the act ought not to be construed to operate retrospectively contrary to the general rule, and so as to turn what was intended to secure a period of time to enable business men to act understandingly under the new law into a source of confusion and mischief to the contrary. * * * And as the act of October 1, 1890, was not repealed by the act of
103 August, 1894, until the latter act became a law, when inconsistent laws were declared thereby repealed, we think it cannot be doubted that Congress intended the rates of duty prescribed by the act of 1894 to be levied on the first day of August if the bill should then be a law, and if not, then as soon after that date as it should become a law. On the first day of August the duties prescribed by the first section of the act of 1894 could not be lawfully levied, and, so far as the importations in this case are concerned and others similarly situated, the law required the exaction of the duties prescribed by the act of 1890. As to such importations the first section of the act of 1894 could not be literally carried out, unless by holding it to operate as a retroactive repeal, notwithstanding the saving clause, and this we consider altogether inadmissible. The language of section one was that on and after the first of August

there shall be levied, and of the second section that on and after the first day of August certain enumerated articles when imported shall be exempt from duty. In our judgment, the word 'shall' spoke for the future and was not intended to apply to transactions completed when the act became a law."

Appellant relies upon the words "or withdrawn for consumption," as found in the preamble of the Wilson act, to sustain the position that the rate of duties therein prescribed apply not only to merchandise thereafter imported from foreign countries, but also to merchandise that had remained in the bonded warehouse for a period of more than three years which should thereafter be "withdrawn for consumption." It may be admitted that such a construction could and should be given to the language of the preamble, if its interpretation was to be drawn from that section alone. But it is the duty of the court to examine the entire act, or at least the pro-
104 visions which have any special bearing upon the question, and also to examine the provisions of other acts which are to be construed in *pari materia* therewith. The entire revenue laws in force must not be overlooked. All acts not repealed must be taken into consideration and harmonized, if possible, so as to make a consistent whole. To give to the section in question the construction which appellant claims for it would, as we have already shown, be inconsistent with the history and general policy of the tariff legislation of this country and repugnant to various provisions of the existing revenue laws. To construe the words "withdrawn for consumption" as intended to apply to the provisions of the previous revenue acts allowing goods to be "withdrawn for consumption" within three years makes it consistent, and such, we believe, was the intention of Congress.

Attorney General Olney, in a letter dated January 17, 1895, to the Secretary of the Treasury, with reference to rates of duty chargeable on certain goods which were originally imported while the provisions of the McKinley tariff act of 1890 were still in force, but remained in the custody of the Government until after the passage of the Wilson tariff act of 1894, expressed views which we believe to be correct and directly applicable here. He said that by the express language of section 1 of the act of 1894 "the new rates apply not to all warehoused goods, as by section 50 of the act of 1890, but only to 'articles (thereafter) imported from foreign countries or withdrawn for consumption.' The latter clause should be construed with the prior legislation above quoted so as to constitute a harmonious whole. In my opinion, therefore, goods imported and entered for warehouse prior to the act of 1894, and not withdrawn
105 for consumption within three years from the date of original importation, are unaffected by the new rates of duty; and the 'duties' mentioned in section 2872 of the Revised Statutes are the duties to which they were previously subject, whatever be the construction to be put upon this section in other respects. My opinion applies not only to goods imported within three years before the act of 1894 took effect, but to all goods theretofore imported and then subject to the tariff rates of 1890."

For the reasons herein given we are of opinion that the contention of the appellee is correct.

The judgment of the circuit court is affirmed with costs.

(Endorsed:) Opinion. Filed Oct. 19, 1896. F. D. Monckton, clerk.

106 United States Circuit Court of Appeals for the Ninth Circuit, October Term, 189–.

THE ANGLO-CALIFORNIAN BANK, LIMITED, Appellant,
vs.
THE SECRETARY OF THE TREASURY, Petitioner, etc., Appellee. } No. 273.

Appeal from the circuit court of the United States for the northern district of California.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the northern district of California and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed with costs.

(Endorsed:) Decree. Filed Oct. 19, 1896. F. D. Monckton, clerk.

107 In the United States Circuit Court of Appeals in and for the Ninth Circuit.

THE ANGLO-CALIFORNIAN BANK (LIMITED), Appellant,
vs.
SECRETARY OF THE TREASURY, Appellee. } No. 273.

Petition for an Appeal to the Supreme Court of the United States.

To the judges of the United States circuit court of appeals in and for the ninth judicial circuit:

The Anglo-Californian Bank (Limited), appellant in the above-entitled suit, feeling aggrieved by the decision and decree of the United States circuit court of appeals in and for the ninth judicial circuit, affirming the decision and decree of the circuit court of the United States in and for the ninth judicial circuit and northern district of California in favor of said appellee, The Secretary of the Treasury, and against The A-glo-Californian Bank (Limited), the appellant, by the undersigned solicitors for appellant, respectfully prays, makes application for, and gives notice of an appeal to the Supreme Court of the United States, to be holden in the city of Washington, from the decision and decree of said United States circuit court of appeals given and rendered and entered on the 19th day of October, 1896, in the above-entitled suit in favor of the appellee and against said appellant.

The said appellant files herewith an assignment of errors to said decision and decree of said United States circuit court of appeals in and for the ninth judicial circuit, showing wherein said de-
108 cision and decree are erroneous and wherein and how the said appellant is aggrieved by said decision and decree of affirmance.

And said appellant prays that an appeal from said decision and decree may be allowed to it to said Supreme Court of the United States aforesaid.

THE ANGLO-CALIFORNIAN BANK
(LIMITED).
By JESSE W. LILIENTHAL.
WILSON & WILSON,
Solicitors for said Appellant.

Dated San Francisco, California, this 14th day of October, A. D. 1897.

(Endorsed:) Petition for an appeal to the Supreme Court of the United States. Rec'd this day a copy of the within petition Oct. 15, 1897. H. S. Foote, U. S. att'y. Sam'l Knight, ass't U. S. att'y. Filed Oct. 15, 1897. F. D. Monckton, clerk.

109 In the United States Circuit Court of Appeals in and for the Ninth Circuit.

THE ANGLO-CALIFORNIAN BANK (LIMITED), Appellant,
vs.
SECRETARY OF THE TREASURY, Appellee.
} No. 273.

Assignment of Errors in Support of Appeal to the Supreme Court of the United States.

The appellant, The Anglo-Californian Bank (Limited), having this day filed a petition praying that an appeal be allowed from the decision and decree of the above-entitled court affirming the decision of the circuit court of the United States in and for the ninth judicial circuit and northern district of California in favor of the appellee, The Secretary of the Treasury, and against the said appellant in the above-entitled action, assigns the following errors asserted and intended to be urged in support of its appeal:

110 I.

The court erred in affirming the decree and decision of the said circuit court reversing the decision of the board of the United States general appraisers.

II.

The court erred in affirming the decree of the said circuit court sustaining its first conclusion of law, which is as follows, to wit:

"That the merchandise involved in this controversy became abandoned to the Government within the meaning of the law and

section 2971, U. S. —, at the expiration of three years from the date of its original importation, and at the time of its withdrawal from bond, as aforesaid, such merchandise was such abandoned goods and was liable to be sold under the provisions of section- 2971, 2972, U. S. R. S."

III.

The court erred in affirming the decree of the said circuit court sustaining its second conclusion of law, which is as follows, to wit:

"That such merchandise upon its withdrawal from bond aforesaid was subject to the rates of duty in force at the time of its abandonment, as contained in the tariff act of March 3, 1883, and section 2970, U. S. R. S., regardless of changes in tariff schedules contained in the tariff acts of October 1, 1890, and August 1, 1894, subsequent to such abandonment."

111

IV.

The court erred in affirming the decree of the said circuit court sustaining its third conclusion of law, which is as follows, to wit:

"That said rails are dutiable upon such withdrawals at the rate of $17.00 a ton, under paragraph 147 of said tariff act of March 3, 1883, and such warehouse charges as may have by law accrued thereon, together with ten per cent. of such duties and charges additional thereto, under section 2970, U. S. R. S."

V.

The court erred in affirming the decree of the said circuit court sustaining its fourth conclusion of law, which is as follows, to wit:

"That the decision of the board of U. S. general appraisers herein is reversed, and the amount of duty exacted by the collector of customs for the port of San Francisco upon the withdrawal of said merchandise from bond was lawfully exacted, and the collector of customs for the port of San Francisco should, and he is hereby directed to liquidate the withdrawal entry of said steel rails accordingly."

VI.

The court erred in affirming the decree of the circuit court sustaining the order adjudging and decreeing that the decision of the board of U. S. general appraisers should be reversed, and that the merchandise covered by the decision of the said board of

112 U. S. general appraisers should be classified for duty under act of March 3, 1883, at the rate of $17.00 per ton and 10 per centum additional thereon under sec. 2970 of the Revised Statutes of the United States.

VII.

That the decision and decree in the above-entitled matter is erroneous and against the just rights of appellant for the following reasons:

1. In that said court did not make a judgment or decree affirming the decision of the board of United States general appraisers

herein adjudging that the said merchandise should be classified for duty at seven-twentieths of one cent per pound, under paragraph 117, Schedule "C," of the tariff act of August 28, 1894, as railway bars, specially provided for therein.

2. In that said court did not hold and decide that the merchandise involved herein was legally in bonded warehouse at the time of its withdrawal for consumption, and that the Secretary of the Treasury was vested with legal authority to authorize its withdrawal for consumption.

3. In that said court held and decided that the tariff act of March 3, 1883, has not been repealed by subsequent legislation, and that section 2970 of the United States Revised Statutes has not been repealed.

113 4. In that the court erred in affirming and sustaining the decision and decree of the circuit court for the reason that the said decision and decree is not supported by the findings of fact of the court, but is against and contrary to said findings and contrary to law.

5. In that the court erred in affirming and sustaining the decision and decree of the circuit court for the reason that the said decision and decree is not supported by the findings of fact of the court, but is against and contrary to said findings and contrary to law in this: that the findings show that the merchandise involved was withdrawn for consumption on the 15th day of March, 1895—that is, after August 28, 1894—at which last-mentioned date an act of Congress entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes" went into effect and was in force at the time of said withdrawal, and the rate of duty, seven-twentieths of one cent per pound, prescribed by said last-mentioned act, applied to said merchandise.

6. The said judgment and decision is erroneous and contrary to law in that it purports to make applicable to said merchandise the rate of duty prescribed by the tariff act of March 3, 1883, and an additional duty of 10 per cent. prescribed by section 2970 of the Revised Statutes of the United States; whereas the said last-mentioned act and said section 2970 had been repealed at the time of said withdrawal for consumption and the provisions thereof did not apply to said merchandise.

114 Wherefore the said appellant, The Anglo-Californian Bank (Limited), prays that the said decision and decree of the said United States circuit court of appeals affirming and sustaining the decision and decree of the said United States circuit court be reversed.

JESSE W. LILIENTHAL,
WILSON & WILSON,
Solicitors for the Anglo-Californian Bank, Limited.

(Endorsed:) Assignment of errors in support of appeal to the Supreme Court of the United States. Rec'd this day a copy of the within assignment of errors. Oct. 15, 1897. H. S. Foote, U. S. att'y. Sam'l Knight, ass't U. S. att'y. Filed Oct. 15, 1897. F. D. Monckton, clerk.

115 In the United States Circuit Court of Appeals in and for the Ninth Circuit.

THE ANGLO-CALIFORNIAN BANK (LIMITED), Appellant,
vs.
SECRETARY OF THE TREASURY, Appellee.
} No. 273.

Order Allowing Appeal.

The Anglo-Californian Bank (Limited), the above-named appellant, having this day presented its petition for appeal from the decision and decree of the United States circuit court of appeals in and for the ninth judicial district, heretofore, to wit, on the 19th day of October, A. D. 1896, made and given and rendered in the above-entitled matter, and having at the same time filed its assignment of errors, and it satisfactorily appearing to us that the question involved is of such importance as to require a review of such decision and decree by the Supreme Court of the United States:

It is hereby ordered that such appeal be, and the same is hereby, allowed as prayed for.

That said appellant give bonds in the sum of one thousand dollars, with two sufficient sureties, conditioned to answer all damages to make its plea good and prosecute the appeal to effect, and conditioned in all respects according to law.

That thereafter, upon the filing and approval of said bond, a transcript of records, proceedings, and papers upon which the
116 decree and decision herein was rendered, duly authenticated, be sent to the Supreme Court of the United States.

WILLIAM B. GILBERT, *Judge.*
WILLIAM W. MORROW, *Judge.*

(Endorsed:) Order allowing appeal. Filed Oct. 16, 1897. F. D. Monckton, clerk.

117 Know all men by these presents that we, The Anglo-Californian Bank (Limited), as principal, and Wm. M. Hoag and Wm. H. Watson, as sureties, are held and firmly bound unto the Secretary of the Treasury of the United States, his successors in office and assigns, in the full and just sum of one thousand ($1,000) dollars, to be paid to the said Secretary of the Treasury of the United States, his successors in office and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 16th day of October, in the year of our Lord one thousand eight hundred and ninety-seven.

Whereas lately, at the circuit court of appeals of the United States for the ninth judicial circuit, in a suit depending in said court between The Anglo-Californian Bank, Limited, appellant, and The Secretary of the Treasury, petitioner, etc., appellee, a decision and decree was rendered against the said appellant, and the said appellant, The Anglo-Californian Bank, Limited, having obtained an

appeal to the Supreme Court of the United States and filed a copy thereof in the clerk's office of said court to reverse the decision and decree in the aforesaid matter, and a citation having been issued directed to the United States of America and the United States attorney for the northern district of California and the Secretary of the Treasury of the United States, citing and admonishing them to be and appear before the Supreme Court of the United States, to be holden at the city of Washington:

Now, the condition of the above obligation is such that if
118 the said The Anglo-Californian Bank, Limited, shall prosecute said appeal to effect and answer all damages and costs if it fail to make the said plea good, then the above obligation to be void; else to remain in full force and virtue.

THE ANGLO-CALIFORNIAN BANK, L'D,
By —— ——, *Manager.*
WM. M. HOAG.
WM. H. WATSON.

UNITED STATES OF AMERICA, }
Northern District of California, } ss:

Wm. M. Hoag and Wm. H. Watson, being duly sworn, each for himself deposes and says that he is a householder in said district and is worth the sum of one thousand dollars, exclusive of property exempt from execution and over and above all debts and liabilities.

WM. M. HOAG.
WM. H. WATSON.

Subscribed and sworn to before me this 16th day of Oct., A. D. 1897.

[SEAL.] F. D. MONCKTON,
Clerk U. S. Circuit Court of Appeals for the Ninth Circuit.

(Endorsed:) Bond on appeal to U. S. Supreme Court. The form of the within bond and sufficiency of the sureties approved Oct. 16, 1897. Wm. W. Morrow, circuit judge. Filed Oct. 16, 1897. F. D. Monckton, clerk U. S. circuit court of appeals for the ninth circuit.

119 United States Circuit Court of Appeals for the Ninth Circuit.

THE ANGLO-CALIFORNIAN BANK, LIMITED, Appellant, }
v. }
THE SECRETARY OF THE TREASURY, Petitioner, etc., Appellee. } No. 273.

I, Frank D. Monckton, clerk of the United States circuit court of appeals for the ninth circuit, do hereby certify the foregoing one hundred and seventeen (117) pages, numbered from one to one hundred and seventeen, both inclusive, to be a true copy of the record and of the assignment of errors and of all proceedings in the above-entitled cause, including the opinion filed, as the originals thereof remain

of record in said circuit court of appeals, and that the same constitute the transcript on appeal to the Supreme Court of the United States in said cause.

Attest my hand and the seal of said United States circuit court of appeals, at San Francisco, California, this 22nd day of October, A. D. 1897.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

120 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America and the United States attorney for the northern district of California and the Secretary of the Treasury of the United States, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, on the fourteenth day of December, 1897, pursuant to an order allowing an appeal, duly filed and of record in the clerk's office of the United States circuit court of appeals for the ninth circuit, wherein The Anglo Californian Bank (Limited) is appellant and The Secretary of the Treasury is appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William W. Morrow, judge of the United States circuit court of appeals for the ninth circuit and United States circuit judge, this 16th day of October, A. D. 1897.

WM. W. MORROW,
Circuit Judge.

121 [Endorsed:] Dock. No. 273. U. S. circuit court of appeals for the ninth circuit. The Anglo-Californian Bank (Limited), appellant, *vs.* The Secretary of the Treasury. Citation. Filed Oct. 18, 1897. F. D. Monckton, clerk.

Received a copy of the within citation this 18th day of October, 1897.

THE UNITED STATES OF AMERICA,
THE SECRETARY OF THE TREASURY, AND
THE UNITED STATES ATTORNEY FOR THE
NORTHERN DISTRICT OF CALIFORNIA,
By SAMUEL KNIGHT,
Assistant U. S. Attorney for said District.

Endorsed on cover: Case No. 16,719. U. S. circuit court of appeals, 9th circuit. Term No., 506. The Anglo-Californian Bank, Limited, appellant, *vs.* The Secretary of the Treasury. Filed November 12, 1897.